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**EXECUTIVE ORDERS, PROCLAMATIONS
AND ADMINISTRATIVE ORDERS**

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 358

FURTHER AMENDING THE FOURTH PARAGRAPH OF EXECUTIVE ORDER NO. 298, DATED AUGUST 12, 1940, ENTITLED "PROHIBITING THE AUTOMATIC RENEWAL OF CONTRACTS, REQUIRING PUBLIC BIDDING BEFORE ENTERING INTO NEW CONTRACTS, AND PROVIDING EXCEPTIONS THEREFOR," AS INSERTED BY EXECUTIVE ORDER NO. 146, DATED DECEMBER 27, 1955, AND AMENDED BY EXECUTIVE ORDER NO. 212, DATED NOVEMBER 6, 1956, AND EXECUTIVE ORDER NO. 318, DATED SEPTEMBER 17, 1958

The Fourth paragraph of Executive Order No. 298, dated August 12, 1940, as inserted by Executive Order No. 146, dated December 27, 1955, and amended by Executive Order No. 212, dated November 6, 1956, and Executive Order No. 318, dated September 17, 1958, is hereby further amended to read as follows:

"However, highway district engineers, city engineers, or project engineers and headquarters engineers in division offices and in Manila can make direct legitimate emergency purchases with any known company in their province, or in nearby provinces, or in Manila, of spare parts for machinery and equipment used in public works which are of the make of the company and/or locally manufactured spare parts of any make which have been tested and found satisfactory by the Secretary of Public Works and Communications and at their prices, less the usual discount extended to government offices and another discount for cash purchases, provided that if a spare part being purchased in Manila will cost ₱50.00 or more, the representative of the Department of Public Works and Communications shall be accompanied by a representative of the Bureau of Supply Coordination; provided further that if such purchases exceed ₱3,000 per month, prior authority shall be secured from the Secretary of Public Works and Communications; and, provided finally, that except in cases of urgently needed

spare parts for immediate use and not for the purpose of carrying them in stock, the approval of the Auditor General or his authorized representative shall be secured before such direct purchases are made."

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the fourteenth.

CARLOS P. GARCIA

President of the Philippines

By the President:

ENRIQUE C. QUEMA

Assistant Executive Secretary

MALACAÑANG
RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 622

RESERVING FOR MILITARY PURPOSES CERTAIN
PARCELS OF THE PRIVATE DOMAIN OF THE
GOVERNMENT SITUATED IN THE BARRIOS OF
BATANGAS, PROVINCE OF BATANGAS, ISLAND
OF LUZON

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the authority vested in me by laws, I, Carlos P. Garcia, President of the Philippines, do hereby withdraw from sale or settlement and reserve for military purposes under the administration of the chief of staff, AFP, subject to private rights, if any there be, certain parcels of the private domain of the government situated in the barrios of Sambat-Ilaya and Calicanto, municipality of Batangas, province of Batangas, Island of Luzon, and more particularly described as follows:

A parcel of land, consolidation plan (LRC) PCN-41, being the consolidation of lots 1882, 1924, 1927, 17574, 1933, 17576, 17578, 17580, and 17582, all of the cadastral survey of Batangas, LRC (GLRO) Cadastral Record No. 1705), situated in the barrios of Sambat-Ilaya and Calicanto, municipality of Batangas, province of Batangas. Bounded on the NE., points 8 to 9 by lot 17584, points 9 to 10 by lot 1936, both of Batangas Cadastre; on the SE; points 10 to 11 by provincial road 15.00 meters wide, points 11 to 14 by lot, 17583, points 14 to 17 by lot 1921, points 17 to 19 by lot 17581, points 19 to 20 by lot 17579, points 20 to 23 by lot 1883, all of Batangas Cadastre; on the SW., points 23 to 24 and 24 to 1 by lot 17577, points 1 to 2 by lot 17575, both of Batangas Cadastre; and on the NW; points 2 to 8 by lot 2779, Batangas Cadastre (Manila Railroad Co.). Beginning at a point marked 1 on plan being N. 79° 57' W., 177.78 meters from B.B.M. 22, Batangas Cadastre, thence N. 47° 43' W., 46.32 meters to point 2; thence N. 42° 02' E., 57.07 meters to point 3; thence N. 41° 59' E., 172.94 meters to point 4; thence N. 41° 53' E., 422.14 meters to point 5; thence N. 42° 03' E., 21.98 meters to point 6; thence N. 40° 15' E., 20.78 meters to point 7; thence N. 37° 47' E., 20.09 meters to point 8; thence S. 84° 14' E., 161.12 meters to point 9; thence S. 83° 17' E., 22.32 meters to point 10; thence S. 9° 52' W., 15.93 meters to point 11; thence S. 43° 42' W., 109.64 meters to point 12; thence S. 42° 02' W., 100.04 meters to point 13; thence S. 42° 02' W., 157.71 meters to point 14; thence N. 89° 24' W., 8.75 meters to point 15; thence S. 1° 43' W., 34.10 meters to point 16; thence S. 88° 29' W., 11.84 meters to point 17; thence N. 86° 27' W., 8.75 meters to point 18; thence S. 41° 57' W., 177.17 meters to point 19; thence S. 42° 12' W., 166.50 meters to point 20; thence N. 89° 04' W., 17.19 meters to point 21; thence S. 1° 22' E., 50.45 meters to point 22; thence S. 77° 46' W., 26.43 meters

to point 23; thence N. $0^{\circ} 44'$ W., 22.58 meters to point 24; and thence N. $48^{\circ} 21'$ W., 94.46 meters to point of beginning; containing an area of 117,092 square meters, more or less. All points referred to are indicated on the plan and are marked on the ground by old points, bearings true, declination $0^{\circ} 30'$ E., date of the original survey, May, 1930, November 1934, and that of the consolidation-survey April 1-6, 1959.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 18th day of September, in the year of Our Lord, nineteen hundred fifty-nine, and of the Independence of the Philippines, the fourteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

REPUBLIC ACTS

Enacted during the Fourth Congress of the Philippines
Second Session

H. No. 1580

[REPUBLIC ACT No. 2551]

AN ACT NAMING THE PRIMARY SCHOOL OF BARRIO MALABO IN THE MUNICIPALITY OF VALENCIA, PROVINCE OF NEGROS ORIENTAL, AS CARSON PRIMARY SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The primary school of Barrio Malabo, Municipality of Valencia, Province of Negros Oriental, is hereby named Carson Primary School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1581

[REPUBLIC ACT No. 2552]

AN ACT CREATING CERTAIN BARRIOS IN THE MUNICIPALITY OF HILONGOS, PROVINCE OF LEYTE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sitios in the Municipality of Hiloños, Province of Leyte, are constituted or converted as barrios of said municipality, to wit:

1. The sitios of Tagnate, Mahangin, Panas and Hibunlod to be known as the barrio of Tagnate;

2. The sitios of Agutayan, Lagtangon, Kandasig and Katungawan to be known as the barrio of Agutayan;

3. The sitios of Campina and Matigbaw to be known as the barrio of Campina; and

4. The sitio of Magnangoy to be known as the barrio of Magnangoy.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1650

[REPUBLIC ACT No. 2553]

AN ACT CREATING THE BARRIO OF SIAYAN IN THE MUNICIPALITY OF SINDANGAN, PROVINCE OF ZAMBOANGA DEL NORTE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Siayan, Bentol, Litalet, Dibalan, Colaton, Moyo Gamay, Pasi and Dalongdong in the Municipality of Sindangan, Province of Zamboanga del Norte, are constituted into a distinct and independent barrio of said municipality to be known as the barrio of Siayan.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1653

[REPUBLIC ACT No. 2554]

AN ACT CREATING CERTAIN BARRIOS IN THE MUNICIPALITY OF ROSARIO, PROVINCE OF BATANGAS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following barrios in the Municipality of Rosario, Province of Batangas, are constituted into barrios of said municipality as follows:

1. The barrio of Macalamcam is divided into two distinct and independent barrios to be known as the barrios of Macalamcam-A and Macalamcam-B;

2. The barrio of Putingkahoy is divided into two distinct and independent barrios to be known as the barrios of Putingkahoy and Nazi;

3. The barrio of Matamis is divided into two distinct and independent barrios to be known as the barrios of Matamis and Antipolo;

4. The barrio of Mayuro is divided into two distinct and independent barrios to be known as the barrios of Mayuro and Bayawang, and

5. The barrio of Tulos is divided into two distinct and independent barrios to be known as the barrios of Tulos and Calantas.

The boundaries of the above-mentioned barrios shall be determined and fixed by the Municipal Council of the Municipality of Rosario, Province of Batangas, within one year from the date of the approval of this Act.

SEC. 2. The sitios of Lumbangan, Cantarilya and Makukak in the Municipality of Rosario, Province of Batangas, are constituted into a distinct and independent barrio of said municipality to be known as the barrio of Lumbangan.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1657

[REPUBLIC ACT No. 2555]

AN ACT CHANGING THE NAME OF PULANTUBIG ELEMENTARY SCHOOL AT DUMAGUETE CITY TO RAMON MAGSAYSAY MEMORIAL SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of Pulantubig Elementary School at Dumaguete City is changed to Ramon Magsaysay Memorial School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1663

[REPUBLIC ACT No. 2556]

AN ACT CREATING CERTAIN BARRIOS IN THE MUNICIPALITY OF SAMAL, PROVINCE OF DAVAO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following places in the Municipality of Samal, Province of Davao, are constituted as barrios of said municipality, to wit:

- a. Anunang as Barrio Anunang;
- b. Aumbay as Barrio Aumbay;
- c. Aundanao as Barrio Aundanao;
- d. Dadatan as Barrio Dadatan;
- e. Del Monte as Barrio Del Monte;
- f. Guilon as Barrio Guilon;
- g. Kana-an as Barrio Kana-an;
- h. Katagman as Barrio Katagman;
- i. Kawag as Barrio Kawag;
- j. Libertad as Barrio Libertad;
- k. Licup as Barrio Licup;
- l. Limao as Barrio Limao;
- m. Linusutan as Barrio Linusutan;
- n. Mambago A as Barrio Mambago A;
- o. New San Remegio as Barrio New San Remegio;
- p. Pangubatan as Barrio Pangubatan;
- q. San Isidro as Barrio San Isidro;
- r. San Miguel as Barrio San Miguel;
- s. Sion as Barrio Sion;
- t. Sta. Cruz as Barrio Sta. Cruz;
- u. Tagbaobo as Barrio Tagbaobo;
- v. Tagbay as Barrio Tagbay;
- w. Tagbitanag as Barrio Tagbitanag; and
- x. Tagdaliao as Barrio Tagdaliao.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1675

[REPUBLIC ACT No. 2557]

AN ACT CHANGING THE NAME OF THE PATAO PRIMARY SCHOOL IN THE BARRIO OF BAWOD, MUNICIPALITY OF BANTAYAN, PROVINCE OF CEBU, TO BAWOD PRIMARY SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the Patao Primary School in the barrio of Bawod, Municipality of Bantayan, Province of Cebu, is changed to Bawod Primary School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1686

[REPUBLIC ACT No. 2558]

AN ACT CREATING BARRIOS IN THE PROVINCE OF ISABELA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sitios in the Municipality of San Agustin, Province of Isabela, are constituted into a barrio of the said municipality, as follows:

Sitios Salay and Narien to Barrio Salay.

SEC. 2. The following sitios in the Municipality of Tumauni, Province of Isabela, are constituted into a barrio of the said municipality, as follows:

Sitios Sical and Cabal to Barrio Namnama.

SEC. 3. The sitio of Puroc No. 6, Salinuñgan, in the Municipality of San Mateo, Province of Isabela, is hereby converted into a barrio to be known as Barrio Salinuñgan East.

SEC. 4. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1687

[REPUBLIC ACT No. 2559]

AN ACT CREATING BARRIOS IN THE PROVINCE OF PANGASINAN

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sitios in the Municipality of Labrador, Province of Pangasinan, are constituted into a barrio of the said municipality, as follows:

Sitios Tokoc, Polowen and the adjoining part of Barrio Bolo bordering Silag to Barrio Magsaysay.

SEC. 2. The following sitios in the Municipality of Mabini, Province of Pangasinan, are constituted into a barrio of the said municipality, as follows:

Sitios Loboc, Lalasoran, Libsong and Biga to Barrio Kaabiañgan.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1688

[REPUBLIC ACT No. 2560]

AN ACT CREATING BARRIOS IN THE PROVINCE
OF ZAMBOANGA DEL NORTE*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The following sitios in the Municipality of Liloy, Province of Zamboanga del Norte, are constituted into barrios of the said municipality, as follows:

Sitios Danao, Tangal and Luwao to Barrio Danao; and
Sitios Balatinao, Cape, Labulo and Gingayan to Barrio San Isidro.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1689

[REPUBLIC ACT No. 2561]

AN ACT CREATING BARRIOS IN THE PROVINCE
OF BATANGAS*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The following sitios in the Municipality of Nasugbu, Province of Batangas, are hereby converted into barrios of the said municipality, as follows:

Sitio Lumbaňgan to Barrio Lumbaňgan;
Sitio Balaytigui to Barrio Balaytigui;
Sitio Malapad na Bato to Barrio Malapad na Bato;
Sitio Aga to Barrio Aga;
Sitio Kayrilao to Barrio Kayrilao; and
Sitio Mataas na Pulo to Barrio Mataas na Pulo.

SEC. 2. The sitio of Sambal in the Municipality of Lemery, Province of Batangas, is hereby converted into a barrio to be known as the barrio of Sambal.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1690

[REPUBLIC ACT No. 2562]

AN ACT CREATING BARRIOS IN THE PROVINCE
OF SAMAR*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The following sitios in the Municipality of Basey, Province of Samar, are constituted into barrios of the said municipality, as follows:

Sitios Bagacay, Dene, Pandong and Cambonia to Barrio Basiao.

Sitios Doňgon, Rawis, Calotan and Tambak to Barrio Serum.

Sitios Pelit, Banga, Pananyogan, Amanlolobog, Tinabanan, Panlalawagan, Sangpao and Carapacan to Barrio Lo-og.

Sitios Waclet, Moñgabong, Cato-ogan, Calapi, Lelinte-an and Agutay to Barrio Doloñgan.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1694

[REPUBLIC ACT NO. 2563]

AN ACT CREATING BARRIOS IN THE THIRD
DISTRICT OF THE PROVINCE OF LEYTE

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The following sitios in the Municipality of Macrohon, Province of Leyte, are constituted or converted into distinct and independent barrios of said municipality, to wit:

1. The sitios of Laray, Abag and Pananawan to be known as the barrio of Laray;

2. The sitios of Sindañgan Proper, Guinabonan, Danao, Gawisan and Lunang to be known as the barrio of Sindañgan;

3. The sitio of Rizal to be known as the barrio of Rizal;

4. The sitio of Mohon to be known as the barrio of Mohon;

5. The sitios of Camboro Proper, Malico, Ad, Magtubod, Coge, and Tabunan to be known as the barrio of Camboro;

6. The sitios of Mangmang Proper, Coot, Abag, Bagacay; Pong-on and Lundag to be known as the barrio of Mangmang;

7. The sitio of Buscayan to be known as the barrio of Buscayan;

8. The sitio of Canlusay to be known as the barrio of Canlusay;

9. The sitios of Malopolo, Cacawan and Salumbañgon to be known as the barrio of Malopolo; and

10. The sitios of Mabini and Pajo to be known as the barrio of Mabini.

SEC. 2. The following sitios in the Municipality of St. Bernard, Province of Leyte, are converted into barrios of said municipality, to wit:

1. The sitio of Tabontabon to be known as the barrio of Tabontabon;

2. The sitio of Bantawon to be known as the barrio of Bantawon;

3. The sitio of Magatas to be known as the barrio of Magatas; and

4. The sitio of Libas to be known as the barrio of Libas.

SEC. 3. The following sitios in the Municipality of Libagon, Province of Leyte, are converted into barrios of said municipality, to wit:

1. The sitio of Pañgi to be known as the barrio of Pañgi;

2. The sitio of Punta to be known as the barrio of Punta;

3. The sitio of Nahaong to be known as the barrio of Nahaong;

4. The sitio of Biasong to be known as the barrio of Biasong; and

5. The sitio of Bugasong to be known as the barrio of Bugasong.

SEC. 4. The following sitios in the Municipality of Pintuyan, Province of Leyte, are converted into barrios of said municipality, to wit:

1. The sitio of Dan-an to be known as the barrio of Dan-an;

2. The sitio of San Ramon to be known as the barrio of San Ramon;

3. The sitio of Canlawis to be known as the barrio of Canlawis;

4. The sitio of Ma-init to be known as the barrio of Ma-init;

5. The sitio of Badyang to be known as the barrio of Badyang;

6. The sitio of Cabutan to be known as the barrio of Cabutan;

7. The sitio of Timba to be known as the barrio of Timba;

8. The sitio of Ponod to be known as the barrio of Ponod;

9. The sitio of Alang-alang to be known as the barrio of Alang-alang; and

10. The sitio of Botoon to be known as the barrio of Bitoon;

SEC. 5. The following sitios in the Municipality of San Francisco, Province of Leyte, are constituted into barrios of said municipality, to wit:

1. The sitio of Pinamudlan to be known as the barrio of Pinamudlan;

2. The sitio of Cahayag to be known as the barrio of Cahayag;

3. The sitio of Punta to be known as the barrio of Punta;

4. The sitio of Kawi to be known as the barrio of Kawi;

5. The sitio of Gabi to be known as the barrio of Gabi;

6. The sitio of Malico and Cuasi to be known as the barrio of Maanyag.

SEC. 6. The sitio of Pong-oy in the Municipality of Cabali-an, Province of Leyte, is separated from the barrio of Magcasa, and constituted into a district and independent barrio of said municipality to be known as the barrio of Pong-oy.

SEC. 7. The following sitios in the Municipality of Sogod, Province of Leyte, are converted into barrios of said municipality, to wit:

1. The sitio of Cabadbaran to be known as the barrio of Cabadbaran;

2. The sitio of Tuburan to be known as the barrio of Tuburan;

3. The sitio of Hindagan to be known as the barrio of Hindangan;

4. The sitio of Kauswagan to be known as the barrio of Kauswagan;

5. The sitio of Pañgi to be known as the barrio of Pangi;

6. The sitio of Sta. Maria to be known as the barrio of Sta. Maria;

7. The sitio of Malinaw to be known as the barrio of Malinaw;

8. The sitio of Maria Plana to be known as the barrio of Maria Plana;

9. The sitio of San Juan to be known as the barrio of San Juan;

10. The sitio of San Vicente to be known as the barrio of San Vicente;

11. The sitio of Dagsa to be known as the barrio of Dagsa;

12. The sitio of Hibodhibod to be known as the barrio of Hibodhibod;

13. The sitio of San Francisco to be known as the barrio of San Francisco Mabuhay;

14. The sitio of Olisihan to be known as the barrio of Olisihan;

15. The sitio of Milagroso to be known as the barrio of Milagroso;

16. The sitio of San Jose to be known as the barrio of San Jose;

17. The sitio of Mabikay to be known as the barrio of Mabikay;

18. The sitio of Rizal to be known as the barrio of Rizal;

19. The sitio of Benit to be known as the barrio of Benit; and

20. The sitio of Pinamonoan to be known as the barrio of Pinamonoan.

SEC. 8. The following sitios in the Municipality of Silago, Province of Leyte, are converted into barrios of said municipality, to wit:

1. The sitio of Dapdap to be known as the barrio of Dapdap;

2. The sitio of Bagacay to be known as the barrio of Bagacay;

3. The sitio of Budmon to be known as the barrio of Budmon ;

4. The sitio of Maliw to be known as the barrio of Maliw; and

5. The sitio of Puntana to be known as the barrio of Puntana.

SEC. 9. The following sitios in the Municipality of Bontoc, Province of Leyte, are converted into barrios of said municipality, to wit:

1. The sitio of Banahaw to be known as the barrio of Banahaw;

2. The sitio of Casao to be known as the barrio of Casao;

3. The sitio of Cawayanan to be known as the barrio of Cawayanan;

4. The sitio of Catuogan to be known as the barrio of Catuongan;

5. The sitio of Lanao to be known as the barrio of Lanao;

6. The sitio of Laogawan to be known as the barrio of Laogawan;

7. The sitio of Guinsanga-an to be known as the barrio of Guinsanga-an;

8. The sitio of Malbago to be known as the barrio of Malbago;

9. The sitio of San Vicente to be known as the barrio of San Vicente;

10. The sitio of Sampongon to be known as the barrio of Sampongon;

11. The sitio of Talisay to be known as the barrio of Talisay;

12. The sitio of Taytagan to be known as the barrio of Taytagan; and

13. The sitio of Tuburan to be known as the barrio of Tuburan.

SEC. 10. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1697

[REPUBLIC ACT NO. 2564]

AN ACT CREATING THE BARRIO OF SAN VICENTE
IN THE MUNICIPALITY OF ROXAS, PROVINCE
OF PALAWAN.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The sitio of Malamnang in the Municipality of Roxas, Province of Palawan, is converted into a barrio of said municipality to be known as the barrio of San Vicente.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 1784

[REPUBLIC ACT NO. 2565]

AN ACT CREATING CERTAIN BARRIOS IN THE
MUNICIPALITY OF ABUYOG, PROVINCE OF
LEYTE.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The following places in the Municipality of Abuyog, Province of Leyte, are constituted as barrios of said municipality, to wit:

Casulongan as Barrio Casulongan;

Odiong as Barrio Odiong;

Responde as Barrio Responde;

Tambis as Barrio Tambis;

Tagaytay as Barrio Tagaytay;

Palanugan as Barrio Palanugan;

Mahayag as Barrio Mahayag;

Mabunga as Barrio Mabunga;

Bugho Sur as Barrio Bugho Sur;

Parasanon as Barrio Parasanon;

Taligue as Barrio Taligue;

Laray as Barrio Laray;

Salvacion as Barrio Salvacion;

Can'aporong as Barrio Can'aporong;

Pilar as Barrio Pilar;

Batug as Barrio Batug ;
Talisayan as Barrio Talisayan;
Guindapunan as Barrio Guindapunan;
Caraye as Barrio Caraye;
Liberacion as Barrio Liberacion;
Campilas as Barrio Campilas;
Malinao as Barrio Malinao;
Cagbolo as Barrio Cagbolo;
Anibongan as Barrio Anibongan;
Libertad as Barrio Libertad;
Tinocolan as Barrio Tinocolan;
Dingle as Barrio Dingle;
Burubud'an as Barrio Burubud'an;
Bahay as Barrio Bahay;
Malaguicay as Barrio Malaguicay;
San Isidro as Barrio San Isidro;
Manarug as Barrio Manarug;
Barayong as Barrio Barayong;
Ulhay as Barrio Ulhay;
Lower Mahaplag as Barrio Lower Mahaplag;
Upper Mahaplag as Barrio Upper Mahaplag;
Cuatro de Agosto as Barrio Cuatro de Agosto;
Sta. Cruz (Layug) as Barrio Santa Cruz (Layug) ;
Hinaguimitan as Barrio Hinaguimitan;
Mahayahay Sur as Barrio Mahayahay Sur;
Pinamanagan as Barrio Pinamanagan;
Maitum s Barrio Maitum;
Tadoc as Barrio Tadoc;
Mag'atubang as Barrio Mag'atubang;
San Francisco as Barrio San Francisco;
Guintagbukan as Barrio Guintagbukan;
Loyonsawang as Barrio Loyonsawang;
Victory as Barrio Victory;
Bito as Barrio Bito;
Can'uguib as Barrio Can'uguib;
Santa Fe as Barrio Santa Fe;
Nalibunan as Barrio Nalibunan; and
Santo Niño as Barrio Santo Niño.

SEC. 2. This Act shall take effect upon its approval.
Enacted without Executive approval, June 21, 1959.

H. No. 2031

[REPUBLIC ACT No. 2566]

AN ACT CHANGING THE NAME OF NAAWAN RIVER
IN THE MUNICIPALITY OF MANTICAO, PROV-
INCE OF MISAMIS ORIENTAL, TO MANTICAO
RIVER.

*Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:*

SECTION 1. The name of the Naawan River in the
Municipality of Manticao, Province of Misamis Oriental,
is hereby changed to Manticao River.

SEC. 2. This Act shall take effect upon its approval.
Enacted without Executive approval, June 21, 1959.

H. No. 2083

[REPUBLIC ACT No. 2567]

AN ACT PROVIDING THAT THE PUBLIC PLAZA IN THE POBLACION OF THE MUNICIPALITY OF CALATRAVA, PROVINCE OF NEGROS OCCIDENTAL, SHALL HEREAFTER BE KNOWN AS ANDRES MENCHACA PARK.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The public plaza in the poblacion of the Municipality of Calatrava, Province of Negros Occidental, shall hereafter be known as Andres Menchaca Park.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2085

[REPUBLIC ACT No. 2568]

AN ACT CHANGING THE NAME OF THE HDA. IDAD PRIMARY SCHOOL IN THE MUNICIPALITY OF CADIZ, PROVINCE OF NEGROS OCCIDENTAL, TO SOMBITO PRIMARY SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the Hda. Idad Primary School in the Municipality of Cadiz, Province of Negros Occidental, is changed to Sombito Primary School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2087

[REPUBLIC ACT No. 2569]

AN ACT CHANGING THE NAME OF AGPAÑGI ELEMENTARY SCHOOL IN THE MUNICIPALITY OF CALATRAVA, PROVINCE OF NEGROS OCCIDENTAL, TO RAMON MAGSAYSAY MEMORIAL ELEMENTARY SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of Agpañgi Elementary School in the Municipality of Calatrava, Province of Negros Occidental, is changed to Ramon Magsaysay Memorial Elementary School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2181

[REPUBLIC ACT No. 2570]

AN ACT CHANGING THE NAME OF THE BARRIO OF CULI-CULI IN THE MUNICIPALITY OF MAKATI, PROVINCE OF RIZAL, TO PIO DEL PILAR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the barrio of Culi-Culi in the Municipality of Makati, Province of Rizal, is changed to Pio del Pilar.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2193

[REPUBLIC ACT No. 2571]

AN ACT CHANGING THE NAME OF THE BARRIO OF DINWIDE IN THE MUNICIPALITY OF CERVANTES, PROVINCE OF ILOCOS SUR, TO BARRIO MAGSAYSAY.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the barrio of Dinwide in the Municipality of Cervantes, Province of Ilocos Sur, is hereby changed to Barrio Magsaysay.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2215

[REPUBLIC ACT No. 2572]

AN ACT CONVERTING THE SITIO OF POGORUAC IN THE MUNICIPALITY OF BURGOS, PROVINCE OF PANGASINAN, INTO A BARRIO OF SAID MUNICIPALITY TO BE KNOWN AS THE BARRIO OF POGORUAC.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitio of Pogoruac in the Municipality of Burgos, Province of Pangasinan, is converted into a barrio of said municipality to be known as the barrio of Poroguac.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2339

[REPUBLIC ACT No. 2573]

AN ACT CHANGING THE NAME OF THE CABAMBANAN BARRIO SCHOOL IN THE MUNICIPALITY OF PAGSANJAN, PROVINCE OF LAGUNA, TO SALVADOR UNSON ELEMENTARY SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the Cabambanan Barrio School in the barrio of Cabambanan, Municipality of Pagsanjan, Province of Laguna, is changed to Salvador Unson Elementary School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2510

[REPUBLIC ACT No. 2574]

AN ACT CREATING THE BARRIO OF TANAYAN IN THE MUNICIPALITY OF KATIPUNAN, PROVINCE OF ZAMBOANGA DEL NORTE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sitios of Pucay, Lapan, Upper Irasan, Montay and Upper Malupis in the Municipality of Katipunan, Province of Zamboanga del Norte, are constituted into a distinct and independent barrio of said municipality to be known as the barrio of Tanayan.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2581

[REPUBLIC ACT No. 2575]

AN ACT CREATING CERTAIN BARRIOS IN THE MUNICIPALITY OF BUENAVISTA, PROVINCE OF QUEZON.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following places in the Municipality of Buenavista, Province of Quezon, are constituted as barrios of said municipality to be known as the barrios of Manlana, Cabong, San Vicente, Villa Batabat, Batabat Norte, Magallanes, De la Paz, San Pedro, Villa Magsaysay, Maligaya, San Diego, Villa Aurora, Masaya, San Isidro, Del Rosario, Bagong Silang and Sia-in, with the following boundaries:

1. *Manlana*.—Starting from the boundary monument of the properties of the late Feliciano Roldan and the late Prudencio Pasta in the sitio of Manlana straight line is drawn Northwest to the western corner of the property of the late Claro Tolentino in the sitio of Pinagminahan; thence from the point a straight line is drawn East to a point between the properties of the late Claro Tolentino and Honorata Malana; thence from that point a straight line is drawn to the top of Mount Espiritu; thence from the point a straight line is drawn Southeast of the mouth of Sangkap Creek, at the shore of Ragay Gulf; thence along the shore towards the west to a point at the shore of Ragay Gulf in the sitio of Maybulo; thence from that point passing along the swamp and highland to the original monument between the properties of Feliciano Roldan and Prudencio Pasta. Bounded on the North—Bo. Cabong; East—Bo. Cawa; South—Ragay Gulf and swamp; and on the West—Bo. Calit.

2. *Cabong*.—Starting from the point between the properties of the late Claro Tolentino and Honorata Malana straight line is drawn towards the top of Mount Espiritu; thence from that point a straight line is drawn Northeast towards the shore of Ragay Gulf at the corner of the property of Santos Ilagan; thence along the shore to Sabang Cabong; thence from that point running along straight line towards Bureau of Lands Monument No. 45 to the intersection of the Barrio San Vicente; thence from that point straight line is drawn towards the top of the

mountain at the point between the properties of the late Claro Tolentino and Honorata Malana. Bounded on the North—Ragay Gulf and Cabong—Sur Guinayangan; East—Ragay Gulf and Bo. Cawa; South—Bo. Manlana; East—Bo. San Vicente.

3. *San Vicente*.—From the top of a high mountain between the properties of the late Claro Tolentino and Honorata Malana straight line is drawn northeasterly direction at a point intersecting a straight line between Sabang, Cabong and Bureau of Lands Monument No. 45; on the North from said point four kilometers running towards said Monument No. 45; thence straight line is drawn southeasterly direction to a point drawn to a point of the mouth of Salu-lu Creek; thence straight line is drawn towards the source of Cadlit Creek; and thence another straight line towards the point between the properties of the late Claro Tolentino and Honorata Malana. Bounded on the North—Bo. San Isidro Guinayangan; East—Bo. Cabong Buenavista; South—Bo. Buló; and on the West—Bo. Villa Batabat.

4. *Villa Batabat*.—Beginning from the South at a corner of the proposed Municipal Agricultural High School site straight line is drawn to a point intersecting a straight line between Sabang Cabong and Bureau of Lands BBM Monument No. 45 where the barrio of San Vicente ends; thence a straight line of four kilometers is drawn to the Bureau of Lands Monument No. 45; thence from that point straight line is drawn to a southwesterly direction to a point where Binanuhan and Tanagin Creeks intersect; thence from that point a straight line is drawn towards the original point at a corner of the proposed Municipal Agricultural High School site. Bounded on the North—Bo. Bantayan Guinayangan; East—Bo. San Vicente; South—Bo. Bangong Silang; and on the West—Bo. Batabat Sur and Binanuhan River.

5. *Batabat Norte*.—Beginning at the point between the properties of the late Felipe Arellano and Ricardo Banaag at the bank of Binanuhan River towards Sabang Tanagin Creek and a straight line is drawn from that point towards another point intersecting a straight line between Sabang Cabong and Bureau of Lands BBM Monument No. 45 which meet the point of Villa Batabat; thence straight line drawn towards Bureau of Lands BBM Monument No. 45; thence straight line drawn southwesterly direction at a point place at Sabang Tibig Creek; thence straight line towards the South to the original point at the bank of Binanuhan River between the properties of the late Felipe Arellano and Ricardo Banaag. Bounded on the North—Bo. Mabini Guinayangan; East—Villa Batabat and Binanuhan River; South—Bo. de la Paz; and on the West—Bo. Magallanes.

6. *Magallanes*.—Beginning from the South at a point in Sabang Tibig Creek straight line is drawn towards the Bureau of Lands BBM Monument No. 45; thence from that point straight line is drawn towards BBM Monument No. 18; thence from that point straight line is drawn southwesterly direction to a point at the bank of Cala-

wag River; thence from that point to another point at the bank of Calawag River at the distance of four kilometers; thence from that point a straight line is drawn southeasterly direction to northern corner of the property of Luis Quiste; thence from that point straight line is drawn North towards Sabang Tibig. Bounded on the North—Bo. Mabini Guinayangan; East—Batabat Norte; South—De la Paz and on the West—Calawag River and Bo. Villa Espina Lopez.

7. *De la Paz*.—From the point of Sabang Bocboc Creek a straight line is drawn to northeasterly direction towards the intersection of Binanuhan River and Piris River; thence from that point running along Binanuhan River down to a point between the properties of the late Felipe Arellano and Ricardo Banaag at the bank of Binanuhan River; thence a straight line is drawn towards the point of the Sabang Tibig Creek; thence straight line southwesterly towards a corner on the North of the property of Luis Quiste; thence from that point straight line is drawn westerly towards the point at the bank of Calawag River where the barrio of Magallanes ends; thence from that point to a point at a distance of three kilometers along Calawag River towards its sources; thence from that point a straight line is drawn towards Sabang Bocboc Creek (The starting point). Bounded on the North—Bo. Batabat Norte and Barrio Magallanes; South—San Pedro; East—Piris River and Binanuhan River and on the West—Calawag River.

8. *San Pedro*.—From the point of Sabang Bocboc Creek straight line is drawn westerly towards a point at the bank of Calawag River where barrio of de la Paz ends; thence along Calawag River to its sources at the top of the mountain; thence from that point a straight line is drawn easterly towards the source of Piris River; thence from that point running down Piris River and Binanuhan River. Bounded on the North—Bo. De la Paz; East—Piris River and Villa Magsaysay; South—Bo. Maligaya and Villa Magsaysay; and on the West—Calawag River.

9. *Villa Magsaysay*.—Starting from the point of Sabang Ubanin Creek (Big) towards the point at the top of Mount Pinagbulosan; thence at the point of the top of Mount Mahangin; thence from that point straight line towards the source of Isda Creek; thence straight line drawn to the source of Apnitan Creek; thence down Apnitan Creek to the intersection of Piris River and Apnitan Creek; thence straight line upwards to the mouth of Ubanin Malake Creek (The Starting Point). Bounded on the North—Bo. del Rosario; East—Bo. San Isidro and Villa Aurora; West—Piris River and San Pedro; on the South—Bo. Maligaya.

10. *Maligaya*.—From the point at the source of Piris River towards the South to the Municipal Boundary Monument between Lopez and Catanawan; thence from that point three kilometers running along straight line between MBM of Lopez and Catanawan towards MBM San Narcisco and Catanawan; thence straight line drawn to the top of Mount Mahangin; thence from that point straight line is drawn to the top of Mount Pinagbulosan; thence from that point straight line is drawn to a point of intersection of Ubanin Creek and Piris River; thence from that point upwards along Piris River down to its source.

Bounded on the North—Bo. Villa Magsaysay; East—Bo. Villa Aurora; South—Municipality of Catanawan; and on the West—Municipality of Lopez.

11. *San Diego*.—Starting from the point of the source Sapang Isda Creek drawn towards the source of Bondoin Creek; thence straight line drawn to the top of Mount Dapdapin; thence straight line drawn towards an agreeable point to the top of Mount Lucobin; thence a line running along the top mountain between the sitios of Cabauhan and Tiw-Tiw towards the top of the mountain which is the source of Yumigaw Creek; thence from that point a straight line to the intersection of Paputlan Creek and Caludhan River; thence from that point at the source of Angngihing Creek; thence from that point straight line towards the top of Mount Bondoin. Bounded on the North—Bo. San Isidro; East—Bos. Catulin, Ilayang Wasay and Masaya; South—Bo. Villa Aurora; West—Bos. Del Rosario and Villa Magsaysay.

12. *Villa Aurora*.—Beginning from the point along the straight line of the boundary Monument Lopez-Catanawan to Monument Catanawan and San Narcisco, where the Bo. Maligaya ends towards the South to the point of the boundary Monument Catanawan—San Narciso; thence straight line drawn towards the intersection of Magsalat River; thence three kilometers straight line drawn North at an agreeable point between the barrios of San Diego and Masaya; thence straight line drawn towards the top of Mount Dapdapin; thence straight line drawn to the top of Mount Bondoin; thence straight line drawn towards the source of Isda Creek; thence straight line drawn to the top of Mount Mahangin; thence straight line drawn to the top of Mount Pinagbulosan; thence straight line drawn South intersecting straight line from the boundary Monument Lopez and Catanawan to the boundary Monument Catanawan and San Narcisco. Bounded on the North—Bo. San Diego; East—Bo. Masaya; South—Municipality of Catanawan and on the West—Daniw-diw River.

13. *Masaya*.—Starting from the MBM Monument Catanawan and San Narcisco drawn towards North at the agreeable boundary between the barrios of San Diego and Villa Aurora; thence straight line drawn to the top of Mount Lucobin; thence straight line drawn to the top of Mount Kanlukot at bank of Daniw-diw River; thence upwards Daniw-diw River at a point three kilometers from Kanlukot at the bank of Daniw-diw River; thence straight line drawn to MBM Monument Catanawan and San Narcisco. Bounded on the North—Bo. Siain; East—Daniw-diw River; South—Municipality of Catanawan; and on the West—Bos. Villa Aurora and San Diego.

14. *San Isidro*.—Starting from the point BBM between del Rosario and Lilukin towards the point of Sabang Bogiw Creek; thence upwards to the source of Bogiw Creek; thence upwards to the source of Bondoin Creek; thence straight line drawn to the source of Isda Creek; thence straight line drawn to the top of Mount Bondoin; thence straight line to the intersection of Angngihing and Tiw-tiw Creek; thence a straight line is drawn towards the point between Catulin and San Isidro; thence straight line between Lilukin, Del Rosario and San Isidro. Bounded on the North—Bo. Lilukin; East—Bo. San Diego; South—Bo. Villa Magsaysay; on the West—Bo. del Rosario.

15. *Del Rosario*.—Starting from the point at the boundary between Catulin and San Isidro straight line towards northwesterly direction to a point at the bank of Piris River; thence running along Piris River to the point at the Mouth of Apnitán Creek; thence upwards the source of Apnitán Creek; thence straight line to a point of Sabang Bugiw-Creek; thence straight line drawn to the original starting point at the boundary between San Isidro and Calukin. Bounded on the North—Piris River; on the South—Villa Magsaysay; East—San Isidro; and on the West—Piris River.

16. *Bagong Silang*.—Starting from the point at the mouth of Bayog River drawn upwards at a point at the mouth of Salu-lu Creek intersecting Bayog River; thence straight line drawn towards the mouth of Matingan-tingan Creek; thence straight line drawn South placing a point at the side of the proposed Buenavista-Lopez road; thence straight line is drawn towards a point at the sitio of Mabiga-biga at the bank of Piris River where a corner of the property of the late Antonina Marcial could be found; thence running down Piris River to a point at the mouth of Bayog River. Bounded on the North—Villa Batabat; East—Bayog River; South—Piris River; and on the West—San Pablo and Batabat Sur.

17. *Sia-in*.—From the point at the top of Mount Lucubin straight line is drawn to the top of Mount Livoran; thence straight line drawn towards the top of Mount Pinagbungan which is the boundary Monument between the barrios of Bukal and Buenavista; thence straight line drawn Southeast to the bank of Magsalat River; thence from that point running down to the mouth of Magsalat River intersecting Daniw-diw River to the top of Mount Kanlukot at the bank of Daniw-diw River; and thence straight line is drawn towards the top of Mount Lucubin; Bounded on the North—Bo. Buenavista and Bukal; East—Bo. Hagonghong; Daniw-diw River; South—Bo. Masaya; on the West—Bo. Ilayang Wasay.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2627

[REPUBLIC ACT No. 2576]

AN ACT TO CHANGE THE NAME OF TABUC PRIMARY SCHOOL IN THE MUNICIPALITY OF TANJAY, PROVINCE OF NEGROS ORIENTAL, TO JOSE ROTEA MEMORIAL SCHOOL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. In recognition of the many acts of liberality and generosity offered by the late Jose Rotea for the establishment and development of the barrio school in Barrio Tabuc, Municipality of Tanjay, Province of Negros Oriental, the name of Tabuc Primary School is hereby changed to Jose Rotea Memorial School.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2630

[REPUBLIC ACT No. 2577]

AN ACT CHANGING THE NAME OF BARRIO SAMALAGUE IN THE MUNICIPALITY OF DAO, PROVINCE OF ANTIQUE, TO BARRIO SANTA MARIA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the barrio of Samalague in the Municipality of Dao, Province of Antique, is changed to Barrio Santa Maria.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2631

[REPUBLIC ACT No. 2578]

AN ACT TO CHANGE THE NAME OF CALLE GRAN CAPITAN IN THE CITY OF TACLOBAN TO JUSTICE NORBERTO ROMUALDEZ, SR. STREET.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of Calle Gran Capitan in the City of Tacloban is hereby changed to Justice Norberto Romualdez, Sr. Street.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2632

[REPUBLIC ACT No. 2579]

AN ACT TO CHANGE THE NAME OF PRESIDENT WILSON STREET IN THE CITY OF TACLOBAN TO SENATOR FRANCISCO ENAGE STREET.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of President Wilson Street in the City of Tacloban is hereby changed to Senator Francisco Enage Street.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

H. No. 2694

[REPUBLIC ACT No. 2580]

AN ACT CHANGING THE NAME OF THE SITIO OF BURAL IN THE BARRIO OF ZINUNDUNGAN, MUNICIPALITY OF RIZAL, PROVINCE OF CAGAYAN, TO SAN JUAN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the sitio of Bural in the barrio of Zinundungan, Municipality of Rizal, Province of Cagayan, is changed to San Juan.

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 21, 1959.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Health

BUREAU OF HEALTH

FOOD AND DRUGS ACT ADMINISTRATIVE DECISION No. 273

(Adopted by the Board of Food Inspection on
October 14, 1958)

PRESCRIBING THE DEFINITIONS AND STANDARDS FOR FILLED MILK ICE- CREAMS AND SHERBETS AND AMEND- ING PART II, ARTICLE I-B, SECTION (p) OF THE DEFINITIONS, STANDARDS OF PURITY LAWS, RULES AND REGULA- TIONS IN CONNECTION WITH FOOD INSPECTION.

I

The following definitions and standards are hereby prescribed for filled milk ice-creams and filled milk sherbets.

(a) Filled Milk Ice-Cream is the frozen product made from good quality filled milk as defined in Administrative Decision No. 270, of high coconut fat content and refined sugar. It must contain not less than 6 per cent coconut fat and not less than 18.5% by weight of total milk solids, not more than $\frac{5}{10}$ of 1% of stabilizer and shall weigh not less than 4.5 lbs. net per gallon.

(b) Filled Milk Ice-Creams with fruits or nuts is the frozen product made from good quality filled milk as defined in Administrative Decision No. 270, of high fat content, and refined sugar, with sound, clean, matured fruits or sound non-rancid nuts. It must contain not less than 4.5% coconut fat, and not more than $\frac{5}{10}$ of 1 per cent of stabilizer and shall weigh not less than 4.5 lbs. net per gallon.

(c) Filled Milk Sherbets is the frozen product made from good quality filled milk and refined sugar, with or without natural flavoring. It must

contain not less than 2.5 per cent coconut fat and not more than $\frac{5}{10}$ of 1 per cent of stabilizer.

(d) Filled Milk Sherbets with fruits or nuts is the frozen product made from good quality filled milk and refined sugar, with sound, clean, matured fruits or sound non-rancid nuts. It must contain not less than 2 per cent coconut fat.

II

The following stabilizers may be used as optional ingredients: gelatin, algin (Sodium alginate); sodium carboxymethylcellulose; extract of Irish moss; psyllium seed husk; agaragar; and, gums including gum acacia, gum karaya, locust bean gum, gum tragacanth, oath gum, and guar seed gum.

III

Paragraph 6 (under the heading of cocolait ice-creams and sherbets) Section (p), Article I-B, Part II of the Standards Purity Law, Rules and Regulations in connection with Food Inspection is hereby amended by deleting the last four lines which reads as follows:

"These standards refer to ice creams and sherbets made from fresh coconuts and do not imply any permission to substitute ordinary coconut oil for milk fat in such products".

This Administrative Decision shall take effect on the date of its publication in the *Official Gazette*.

J. A. NOLASCO, M.D., C.P.H.

Director of Health Services

ELEUTERIO CAPAPAS

Commissioner of Customs

JOSE ARAÑAS

Commissioner of Internal Revenue

Approved:

ELPIDIO VALENCIA, M.D.

Secretary of Health

Department of Commerce and Industry

RULES AND REGULATIONS AS AMENDED, FOR THE ENFORCEMENT OF REPUBLIC ACT NO. 830.

October 15, 1959

Pursuant to Section 3 of Republic Act No. 830, the rules and regulations promulgated on September

16, 1952, as amended, is hereby further amended in order to facilitate and expedite the importation and re-exportation of goods imported under Republic Act No. 830, to read as follows:

1. A bona fide exhibitor in a forthcoming fair or exposition of the arts, sciences and industries in the Philippines, may file an application with

the Producers Incentives Board on a form prescribed and adopted by said office, to import or bring to the Philippines articles for display or exhibition in such fair or exposition.

2. No fees whatsoever shall be charged by the Producers Incentives Board for the filing of any application to import or bring to the country articles from foreign countries under Republic Act No. 830.

3. A bona fide exhibitor is a person, corporation, firm or association who has been granted the lease of a space or lot within the area of a forthcoming fair or exposition for the purpose of displaying or exhibiting certain articles during said fair or exposition.

4. When a foreign government itself is a participant in a fair or exposition of the arts, sciences and industries in the Philippines, it may designate any of its diplomatic or consular officials to apply for the license to bring to the Philippines articles from said foreign country for display or exhibition in the fair or exposition.

5. The application shall be accompanied by a certificate from the Director-General or official in charge of a fair or exposition in the Philippines to the effect that the applicant is a bona fide exhibitor in said fair or exposition.

6. The certificate of the Director-General or official in charge of any fair or exposition shall contain: the name of the exhibitor, his nationality, the kinds of goods to be exhibited by him as enumerated in his application for space in the fair or exposition, the date he applied for a concession, the date the application for concession was approved, the size of his concession, the payment he has made for the lease of space or lot, and the duration of the fair or exposition. The seal of the fair or exposition shall be affixed to the certificate. The fair or exposition shall furnish importers of articles under Republic Act No. 830 with proper stickers which shall be placed on the cases containing the exhibits in order to distinguish the articles from other imported goods.

7. Application to import or bring to the Philippines articles for display or exhibition in any fair or exposition in the Philippines under Section 1 of Republic Act No. 830 shall be referred by the Producers Incentives Board with appropriate recommendation to the Secretary of Commerce and Industry. If said application is approved by the Secretary of Commerce and Industry, the Producers Incentives Board shall issue the corresponding permit. A general license may be issued by the Producers Incentives Board to any foreign government to bring to the Philippines the articles for display or exhibition enumerated in its application.

8. Any material misrepresentation in an application or in any of the papers supporting such application required by these rules and regulations shall be sufficient cause for the outright rejection of the application.

9. An exhibitor shall be allowed to import or bring to the Philippines under Republic Act No.

830 only a reasonable quantity of goods, such quantity to be determined on the basis of the size of his concession in the fair or exposition for which the goods are being imported and the nature of the exhibition.

10. As soon as any article imported or brought to the Philippines for the purpose mentioned under Republic Act No. 830 are unloaded at a port of entry in the Philippines, the consignee shall furnish within seven days after the goods' arrival, the office of the fair or exposition, the Bureau of Customs, Bureau of Internal Revenue, Producers Incentives Board, the Central Bank of the Philippines, and the Bureau of Commerce, with certified copies of the bill of lading and consular invoice for said goods. An inventory shall be made immediately upon arrival of the goods by the owner thereof in the presence of one representative each from the office of the fair or exposition, the Bureau of Customs, Bureau of Internal Revenue, Producers Incentives Board, Central Bank of the Philippines, and the Bureau of Commerce.

11. Consignees of imported exhibits shall post a bond with the Collector of Customs of the port of entry in an amount equal to one and one-half times the ascertained duties, taxes and other charges on the articles imported. However, if the exhibitor is a foreign government, a letter from its consul or diplomatic representative in the Philippines guaranteeing payment of the duties and taxes, which may be imposed on the goods in the event that they are withdrawn for local consumption shall be sufficient.

12. At the termination of the fair or exposition for which the articles have been imported or brought to the Philippines, an inventory of the remaining goods shall be made by the exhibitor or owner thereof in the presence of one representative each from the fair or exposition, the Bureau of Customs, Bureau of Internal Revenue, Producers Incentives Board, Central Bank of the Philippines and the Bureau of Commerce.

13. All articles imported or brought to the Philippines under Republic Act No. 830 which the exhibitor desires to re-export or to return to the country of origin may be re-exported or shipped back to said place of origin free from any taxes, duties, fees and charges imposed by the revenue laws of the Philippines enforced at the time of shipment.

14. Articles imported or brought to the Philippines under the provisions of Republic Act No. 830 may be withdrawn for use and consumption in the Philippines. However, all articles when so withdrawn from the fair or exposition shall upon withdrawal, be subject to taxes, duties, fees and charges imposed upon such articles by the revenue laws enforced at the time of said withdrawal.

15. Any article included in the original invoice or bill of lading of an exhibitor but no longer found or included in the inventory made or exhibits

after the fair or exposition shall be considered as withdrawn from the fair or exposition for use or consumption; provided, however, that articles donated to the Republic of the Philippines or any agency or instrumentality thereof shall not be considered as withdrawn for use or consumption. In this case, the date of the termination of the fair or exposition shall be considered as the date of withdrawal of said articles from the fair or exposition.

16. Articles which are not re-exported or shipped back to the country of origin after the fair or exposition but are sold or consumed locally shall be subject to the taxes, duties, fees and charges imposed by the revenue laws of the Philippines. Articles not reexported or shipped back to their country of origin within two months after the termination of a fair or exposition shall be deemed to be withdrawn for use or consumption in the Philippines and shall be subject to taxes, duties,

fees and charges imposed upon such articles by the revenue laws of the Philippines after the expiration of the said period of two months.

17. Proceeds from the sale of articles exhibited or displayed in any fair or exposition of the arts, sciences and industries in the Philippines may be remitted to the country of origin of the goods subject to the laws and the rules and regulations and/or circulars of the Central Bank of the Philippines governing dollar remittances. Such remittances shall be subject to the taxes, fees and charges imposed by the revenue laws of the country.

18. All importations made under Republic Act No. 830 shall not be charged against any existing import allocations.

19. These rules and regulations shall take effect immediately upon promulgation.

PERFECTO E. LAGUIO
Undersecretary

DECISIONS OF THE SUPREME COURT

[No. L-11755. April 23, 1958]

FLORENCIO SENO, plaintiff and appellant, *vs.* FAUSTO PESTOLANTE and TELESFORO BARIMBAO, defendants and appellees.

COURTS; JURISDICTION; FORECLOSURE; CHATTEL MORTGAGE VALUED MORE THAN P2,000.00.—Although the purpose of an action is to recover an amount plus interest which comes within the original jurisdiction of the Justice of the Peace Court, yet when said action involves the foreclosure of a chattel mortgage covering personal properties valued at more than P2,000.00, the action should be instituted before the Court of First Instance.

APPEAL from an order of the Court of First Instance of Cebú. Rodríguez, J.

The facts are stated in the opinion of the Court.

Seno, Mendoza & Doronio for plaintiff and appellant.

Bernardo M. Site for defendant and appellee Telesforo Barimbao.

Blanco & Mancao Law Office for defendant and appellee Fausto Pestolante.

BAUTISTA ANGELO, J.:

Plaintiff brought this action before the Court of First Instance of Cebu to recover from defendant Fausto Pestolante the sum of P600.00, plus interest, and the sum of P250.00 as attorney's fees and, in default of payment thereof, to order the foreclosure of the chattel mortgage executed by said defendant covering personal properties valued at P2,500.00. One Telesforo Barimbao was made party defendant for the reason that he is presently in possession of the mortgaged property and has refused to surrender the same to plaintiff.

Defendant Barimbao, answering the complaint, stated that he refused to surrender possession of the mortgaged property because he has purchased it from his co-defendant as evidenced by a deed of sale executed before a notary public. Defendant Pestolante, on the other hand, filed a motion to dismiss on the ground, among others, that the court has no jurisdiction to take cognizance of the case, it appearing that the action is only to collect a balance of P600.00 which comes under the original jurisdiction of the Justice of the Peace Court of Oroquieta, Misamis Occidental.

On August 1, 1956, the court sustained the motion and dismissed the complaint without pronouncement as to costs. The reasons on which the dismissal is predicated are:

"A careful perusal of the complaint discloses that the nature of this case is but a collection of the balance of P600.00 which defendants owe the plaintiff out of the original debt of P1,900.00, and to secure the prompt and full payment of said principal obligation and interest thereon, a deed of chattel mortgage in favor of the plaintiff was executed. Later on, P950.00 was paid by defendant Fausto Pestolante of said obligation leaving an unpaid balance of P600.00. The chattel mortgage was executed in the municipality of Oroquieta, Misamis Occidental on February 17, 1954. The Justice of the Peace Court of Oroquieta, Misamis Occidental is the proper court who has original and exclusive jurisdiction to try this case. Section 3, Rule 5 of the Rules of Court invoked by plaintiff is not applicable to the present case for said section refers to foreclosure of mortgage on real property."

From the order of dismissal, plaintiff took the case directly to this Court on the ground that only questions of law are involved.

There is merit in the appeal. While it is true that the purpose of the action is to recover the sum of P600.00, plus interest, which comes within the original jurisdiction of the justice of the peace court, it is as well true that the action involves the foreclosure of the chattel mortgage executed by defendant Fausto Pestolante to secure the payment of his obligation, which mortgage covers personal properties valued at more than P2,000.00. Speaking of foreclosure of a chattel mortgage, former Chief Justice Morán says: "Of course a chattel mortgage may be foreclosed judicially, following substantially the same procedure provided in this Rule (Rule 70, Rules of Court). * * * When the mortgagor refuses to surrender possession of the mortgaged chattel *an action of judicial foreclosure necessarily arises*, or one of replevin to secure possession as a preliminary step to the sale contemplated in Section 14 of Act No. 1508" (Morán, Comments on the Rules of Court, Vol. II, 1957 Ed., 250-251). And in a similar case, this Court said: "Where * * * the debtor refuses to yield up the property, the creditor must institute an action, *either to effect a judicial foreclosure directly*, or to secure possession as a preliminary to the sale above quoted" (Bachrach Motor Co. v. Summers, 42 Phil., 6). (Italics supplied.)

Plaintiff had to institute the present action because, as alleged in the complaint, one Telesforo Barimbao has refused to surrender the possession of the mortgaged chattel because he claims to have bought it from the mortgagor free from encumbrance by virtue of a document executed before a notary public. And the action has to be instituted before the court of first instance because the chattel is worth more than P2,000.00.

WHEREFORE, the order appealed from is hereby set aside and the case is remanded to the trial court for further proceedings, with costs against appellee Fausto Pestolante.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepción, Reyes, J. B. L., Endencia, and Félix, JJ., concur.

Order set aside; case remanded.

[No. L-11016. May 23, 1958]

A. U. VALENCIA & Co., plaintiff and appellant, *vs.* HERMINIA C. LAYUG and MARCIAL LAYUG, defendants and appellees.

PLEADING AND PRACTICE; CAUSE OF ACTION; TEST OF SUFFICIENCY OF FACTS; CASE AT BAR.—Appellant brought action against appellee spouses to recover commission for the sale of the property of appellee wife in accordance with an exclusive agency contract between the latter and appellant. The complaint was dismissed for failure to state a cause of action in that the property sold, being conjugal, said appellee had no authority to enter into the agency contract, and consequently, the contract was null and void. *Held:* The dismissal is unjustified. Nowhere in the complaint does it appear that the property in question is conjugal property. On the contrary, the agency contract attached to the complaint wherein appellee authorized the plaintiff to find a buyer, referred to said property as her own. Also, the deed of absolute sale of the said property referred to said appellee as the vendor and her husband signed the deed only to show his marital consent. If the property really belonged to the conjugal partnership, that would be a matter of defense for the appellees to prove in a regular trial. The test of the sufficiency of facts alleged in the complaint to constitute a cause of action is, whether or not, admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint.

APPEAL from an order of the Court of First Instance of Manila. Bayona, *J.*

The facts are stated in the opinion of the Court.

Alfredo G. de Guzmán for the plaintiff and appellant.
Virgilio V. David for defendants and appellees.

MONTEMAYOR, *J.:*

On January 4, 1956, plaintiff A. U. Valencia & Co., a real estate broker, filed an action in the Municipal Court of Manila against defendants Herminia C. Layug and her husband, Marcial Layug, to recover the sum of ₱1,510.00, as commission for the sale of the property of Herminia to one Lope Yutuc, in accordance with a brokerage or exclusive agency contract between the plaintiff and Herminia. A copy of the said agency contract was annexed to the complaint. Defendants filed an answer with a counterclaim. After hearing, judgment was rendered in favor of the plaintiff for the sum of ₱1,510.00 with interest, plus ₱100.00 as attorney's fees, and costs. The defendants appealed to the Court of First Instance of Manila, where they filed a motion to dismiss on the ground that the complaint failed to state a cause of action. The theory behind the motion was that the property sold belonged to the conjugal partnership and only her husband, Marcial Layug, as the administrator thereof,

had the authority to enter into the agency contract; that Herminia had no such authority, and consequently, said agency contract was void. Acting upon the motion, the trial court, accepting the theory of the defense, and holding the agency contract to be null and void, by order of June 23, 1956, dismissed the complaint, with costs. Plaintiff is appealing said order directly to us.

Nowhere in the complaint does it appear that the property in question is conjugal property. On the contrary, the agency contract wherein defendant Herminia authorized the plaintiff to find a buyer, referred to said property as her own. Not only that, but according to the deed of absolute sale of the said property, a copy of which is attached to the Memorandum in Lieu of Oral Argument filed by plaintiff-appellant, the vendor therein is Herminia. In other words, she appears as the owner of the property, and her husband signed the deed only to show his marital consent. We therefore find no justification whatsoever for the dismissal of the complaint, which to all appearances is sufficient to constitute a cause of action or to serve as a basis for granting the relief sought by the plaintiff.

The complaint was dismissed not on the basis of any evidence adduced by the parties or as the result of a trial on the merits because there has been neither a trial nor any presentation of evidence, but only a motion to dismiss. If the property really belonged to the conjugal partnership, that would be a matter of defense for the defendants to prove in a regular trial. The test of the sufficiency of facts alleged in the complaint to constitute a cause of action is, whether or not, admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint. (*Paminsan vs. Costales*, 28 Phil. 487, 489; *Blay vs. Batangas Transportation Co.*, 80 Phil. 373; *De Jesus vs. Belarmino*, 50 Off. Gaz. No. 7, p. 3064).

IN VIEW OF THE FOREGOING, the order appealed from is set aside and this case is hereby remanded to the trial court for further proceedings. The defendants will pay the costs.

Parás, C. J., Bengzon, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, and Félix, JJ., concur.

Order set aside.

[No. L-9957. April 25, 1958]

BAYANI SUBIDO, ETC., ET AL., petitioners and appellants, *vs.*
HON. ARSENIO H. LACSON, ETC., ET AL., respondents
and appellees.

1. PARTIES; PUBLIC CORPORATION; REAL PARTY; ACTION FOR REFUND OF ILLEGALLY COLLECTED FEES.—An action for refund of fees collected under an illegal ordinance, should, under ordinary circumstances include, the City of Manila as a party as the funds have been received by it and will have to be returned by it if the action succeeds. The officials concerned are not ordinarily the real party in interest but the City or public corporation itself.
2. ID.; ID.; WHEN CEASED AS REAL PARTY; OFFICIALS AS REAL PARTIES IN INTEREST.—It is no longer necessary to include the City as the real party in interest, when it has already acquiesced to the refund by the approval of the appropriation which includes the total amount to be refunded. In that case, the City has ceased to be the real party in interest; the real parties in interest now are the officers or officials of the City who refuse to perform their ministerial acts and duties.
3. MANDAMUS; REFUND OF ILLEGALLY COLLECTED FEES; ORDINARY ACTION NOT ADEQUATE.—The extraordinary legal remedy of mandamus and prohibition are more speedy and adequate to bring about the end of purpose desired by the petitioners. As the Auditor has already authorized payment of the claims, and the President has affirmed the decision of the Auditor, and the Municipal Board of the City of Manila has already appropriated the funds necessary for the payment of the claims, an ordinary action would be superfluous and would entail more delay than is necessary for the purposes of petitioners.
4. APPEAL AND ERROR; QUESTIONS NOT RAISED IN COURT BELOW.—Questions which have not been raised for the first time in the court *a quo* are not subject to be considered in the appellate court.

APPEAL from a judgment of the Court of First Instance of Manila. Bayona, *J.*

The facts are stated in the opinion of the Court.

Abelardo Subido & Associates for petitioners and appellants.

City Fiscal Eugenio Angeles and *Assistant Fiscal Eulogio Serrano* for respondents and appellees.

LABRADOR, *J.*:

Action for mandamus instituted on March 22, 1954, against the City Auditor and the City Treasurer of Manila to pass in audit and pay the claims of petitioners for refund of meat inspection fees collected under Ordinance No. 2991 (approved November 23, 1946), from the year 1946 to 1951, amounting to around ₱179,461.33. The Mayor of the City of Manila is joined as defendant because he has ordered the City Auditor and the City Treasurer to suspend action on the said claims, and it is sought to prohibit him from enforcing said order.

The case was submitted for decision upon an agreed statement of facts and various documents having relation to official action in connection with the claims. The stipulation of facts is as follows:

"1. Petitioners (with the exception of Atty. Bayani Subido) are duly licensed meat vendors in the city markets who paid meat inspection fees under Ordinance No. 2991.

"2. The respondent Hon. Arsenio H. Lacson is the incumbent Mayor of Manila, while the respondent Hon. Marcelino Sarmiento is the incumbent City Treasurer of Manila.

"3. That on June 11, 1951 in an opinion No. 6 the Secretary of Justice ruled that Ordinance No. 2991 was illegal and void because it was "patently beyond the power of the City of Manila to enact," and that the City of Manila forthwith stopped the enforcement of the said ordinance.

"4. That on May 5, 1951, petitioners, through their counsel, Atty. Bayani Subido, filed their claims for refund of meat inspection fees with the City Treasurer.

"5. That the Hon. Manuel de la Fuente, then mayor of the City of Manila referred the matter to the Auditor General for a ruling as to whether or not meat inspection fees claimed by the petitioners were refundable, the same having been paid without protest.

"6. That on June 17, 1952, the respondent Mayor Arsenio H. Lacson informed petitioners' counsel Atty. Bayani Subido that the Auditor General had authorized the refund of meat inspection fees regardless of whether or not the fees were paid with or without protest, and requested that complete statement of claims for refunds be submitted to his office so that he may ask the Municipal Board to appropriate the necessary funds therefor.

"7. That petitioners, by counsel, informed the respondent Mayor Arsenio H. Lacson that they had submitted the complete statement of claims to the Municipal Board totalling P219,007.93 meat inspection fees paid by petitioners to the City Government under Ordinance No. 2991.

"8. That on October 31, 1952, the respondent Mayor Arsenio H. Lacson approved the City Budget for the year 1952-1953 which city budget was denominated as Ordinance No. 3538 of the City of Manila.

"9. That after the approval of Ordinance No. 3538 by the respondent Mayor Arsenio H. Lacson, the Secretary of the Municipal Board, informed the respondent City Treasurer in a letter dated November 3, 1952 that the claims of petitioners amounting to P219,007.93 filed through counsel have been included in the amount of P297,349.93 under "Miscellaneous Expenditures" of the Appropriation Ordinance No. 3538 of the City of Manila for the fiscal year 1952-1953.

"10. That when petitioners presented the vouchers covering the refund of meat inspection fees paid by them from 1946-1951 the respondent City Treasurer advised them that he will pay only the claims for two years from the date the claims were filed in accordance with a 7th Indorsement of the Auditor General dated April 7, 1952, that is, from May 5, 1949 to May 5, 1951.

"11. That in view of the information given by the respondent City Treasurer, petitioners filed separate vouchers for the authorized period from May 5, 1949 to May 5, 1951, and another set for the remaining claims, that is, for the period from May 5, 1946 to May 5, 1949.

"12. That the respondent Mayor suspended the payment of meat inspection fees in an order dated January 16, 1953, after the claims

of petitioners amounting to P33,834.80 had been paid. Ground for the suspension was the investigation ordered by the respondent Mayor Arsenio H. Lacson of the alleged loss of public documents in the City Veterinarian's office bearing on the refund.

"13. That the petitioners, through counsel, urged the respondent Mayor Arsenio H. Lacson to exclude them from the suspension order in a letter dated January 17, 1953. But the respondent Mayor, replying on the same day, assured petitioners that payments will be resumed after a thorough investigation of the alleged loss of documents in the City Veterinarian's Office bearing on the claims.

"14. That in a letter dated February 23, 1954, the respondent mayor authorized the respondent City Treasurer 'to effect the refund of said fees (meat inspection fees) provided that the claims therefor had been filed within the period of two years from the date of collection thereof of the City'.

"15. That on January 18, 1954, the Auditor General revised its ruling contained in his 7th Indorsement dated April 7, 1952, allowing the payment of refunds of meat inspection fees within five years from the date the claims were filed, provided however, that said dealers or their attorneys were not officially advised nor furnished a copy of the aforementioned 7th Indorsement of April 7, 1952 of the Auditor General before November 19, 1952.

"16. That petitioners were advised of the contents of the 7th Indorsement of April 7, 1952 of the Auditor General on December 18, 1952 by the respondent City Treasurer.

"17. That the claim of petitioner B. Almario for P5,711.70 within the two-year period was paid in July, 1954.

"18. That the respondent City Treasurer will make payment of the claims of petitioners upon the revocation of the ban contained in letter dated January 16, 1953 (Exhibit 'T') and letter dated February 23, 1954 (Exhibit 'P'). In other words, when these letters were revoked by this Honorable Court, the respondent City Treasurer will pay the claims upon presentation of the vouchers.

"19. That respondent City Treasurer is the department head that approves the vouchers for claims for refund of meat inspection fees as prepared by his office.

"20. That previous to the issuance of letter dated February 23, 1954, the vouchers for refund of meat inspection fees were not passed through the respondent City Mayor's Office for approval.

"21. That the respondent City Treasurer is under the supervision and control of the Mayor in accordance with the City Charter.

"22. That the City Auditor will act on the vouchers for refund of meat inspection fees when the same are submitted to him.

"23. That the claims of petitioners still unpaid are those paid within the five-year period from the filing of the claims."

The Court of First Instance, Hon. Froilan Bayona presiding, ruled that "there exists no authority promulgated by Congress which gives any one the authority to sue the City Mayor and Treasurer of the City of Manila in lieu of the said City as a public corporation, because any judgment that could be rendered against said official for refund of license fees unlawfully collected and levied would be unenforceable against the City of Manila and the funds of the latter (City of Manila) in possession or custody of said officials cannot be paid or disposed by them to satisfy any judgment." From the above judgment petitioners have appealed to this Court.

There is no question that an action for refund of fees collected under an illegal ordinance, should, under ordinary circumstances, include the City of Manila as a party as the funds have been received by it and will have to be returned by it if the action succeeds. The officials concerned are not ordinarily the real party in interest but the City or public corporation itself. The situation in the case at bar is, however, entirely different, because (1) the claims for refund have been passed upon favorably and have been authorized to be paid by the Auditor General of the Philippines, whose decision has, upon appeal to the President of the Philippines, been confirmed by the latter; (2) the petitioners herein had submitted the list of their claims to the Municipal Board of the City and the latter in its Ordinance No. 3538, which is the appropriation ordinance for the City for the fiscal year 1952-1953, had approved an item amounting to ₱297,349.93 designated as "Miscellaneous Expenditures," which includes the sum of ₱219,007.93, representing the total amount to be refunded to the petitioners (Exhibit "D," attached to the Stipulation of Facts); (3) some of the claims presented of the same nature as those of the petitioners had already been paid and the City Treasurer is ready and willing to make payment of the claims, except that the City Mayor has ordered the suspension of the payments (see par. 18, Stipulation of Facts).

It is apparent, therefore, that the City had agreed to the refund of the fees collected under the invalid ordinance by the approval in accordance with law of the corresponding appropriation for the purpose, so that the only impediment to the petitioners' action is the refusal of the City Treasurer to approve the vouchers and pay the claims under the excuse that the City Mayor has ordered the suspension of such payments.

It has been held that when an officer refuses or neglects to perform an act which the law imposes as an obligation or a duty, mandamus lies against such officer to compel him to execute the ministerial act. We have so held in the cases of *Lamb vs. Phipps*, 22 Phil. 456; *Cia. Gen. de Tabacos vs. French and Unson*, 39 Phil. 34; *Suanes vs. Chief Accountant of the Senate, et al.*, 81 Phil. 818. It is no longer necessary to include the City as the real party in interest, because it has already acquiesced to the refund by the approval of the appropriation necessary for the purpose. The City has ceased to be the real party in interest; the real parties in interest now are the officers or officials of the City who refuse to perform their ministerial acts and duties to pay the claims, to the prejudice of the petitioners.

It is urged in support of the decision of the court *a quo* that the City Mayor who is vested with the executive control of all the departments of the City government has the power to order the suspension of such payments by the City Treasurer. Before the present action was instituted, the suspension might have been in part justified, because of suspicions entertained by the City Mayor that irregularities have been committed in the refund of claims of other persons similarly situated as the petitioners. But such excuse or reason has ceased to exist with the report of the Chief, General Investigation Section of the Police Department of the City, dated June 7, 1953 (Exhibit "U"), finding no such irregularities.

Then the acts of the chief executive of the City and even of the President of the Philippines should and must be in accordance with law and reason; in other words, the control that the law vests in executive officers is not arbitrary; the control must be exercised in accordance with law and the facts. Abuse of such powers of control is not within the contemplation of the law granting authority of control to executive officials. In the case at bar, under the circumstances, the control by the Mayor can be said to have been abused, there being no reason or ground for further ordering the suspension of payments, it being apparent that the claims appeared to be legitimate. The objection to the action in this particular is, therefore, without merit.

It is also urged that the action of mandamus does not lie but an ordinary action for refund of the inspection fees collected under the illegal ordinance. We hold that under the circumstances of the case an ordinary action would not be adequate. The extraordinary legal remedy of mandamus and prohibition are more speedy and adequate to bring about the end or purpose desired by the petitioners. As the Auditor has already authorized payment of the claims, and the President has affirmed the decision of the Auditor, and the Municipal Board of the City of Manila has already appropriated the funds necessary for the payment of the claims, an ordinary action would be superfluous and would entail more delay than is necessary for the purposes of petitioners.

Other questions and objections raised in the brief of the respondents are either beyond the agreed statement of facts or improperly injected in this Court on appeal, such questions not having been raised for the first time in the court *a quo* and, therefore, not subject to be considered in this Court. (*Coingco vs. Flores*, G. R. Nos. L-2147 and L-2148, December 9, 1949, 46 Off. Gaz., 1566; *People vs. Mejares*, G. R. No. L-3494, September 24, 1951; *Talento*,

et al. *vs.* Makiki, et al., G. R. No. L-3529, September 29, 1953, 49 Off. Gaz., 4331; The Shell Co. of the P. I., Ltd. *vs.* Vaño, G. R. No. L-6093, February 24, 1954; Lamko *vs.* Dioso, et al., G. R. No. L-6923, October 31, 1955.)

The judgment appealed from is hereby reversed and let the writ issue as prayed for in the petition, against the respondent City Mayor, to prevent him from suspending or interfering with the approval and payment of the claims of the petitioners and against the City Treasurer to compel him to pay the petitioners' claims after the approval of the vouchers supporting the same. The action against the City Auditor is hereby dismissed, it appearing from the stipulation of facts that he has nothing to do with the payment of the claims. Costs against respondents in both instances.

Parás, C. J., Bengzon, Montemayor, Bautista Angelo, Concepción, Reyes, J. B. L., Endencia, and Félix, JJ., concur.

Reyes, A., J., concurs in the result.

Judgment reversed.

[No. L-10564. April 25, 1958]

MANDIAN (MANOBA), plaintiff and appellee, *vs.* DIONISIO LEONG, defendant and appellant. CELESTINO LEONG, defendant-intervenor and appellee.

1. APPEAL AND ERROR; ORDER OF DEFAULT; INTERLOCUTORY NOT APPEALABLE.—An order declaring a party in default is not appealable it being an interlocutory and preliminary to the hearing of a case on the merits (*Sitchon vs. Prov. Sheriff of Occidental Negros*, 80 Phil. 397) and remains under the control of the Court and may be modified or rescinded by it on sufficient ground at any time before final judgment (1 Francisco, Rules of Court, Part II, p. 642.)
2. ID; ID; HOW IT COULD BE APPEALED.—It is a prerequisite to defendant's right to appeal from the order of default that he should file a motion under Rule 38 asking that the order of default entered against him be set aside (*Lim Toco vs. Go Fay*, 80 Phil. 166; *Rodrigo vs. Cabrera*, L-6074, September 16, 1954; *Son vs. Melendres* L-3824, May 16, 1951, and others). Once such motion is filed, the defendant, even if his motion is denied, becomes entitled to notice of all further proceedings including final judgment (*Reyes Calingo vs. Tan G. R.* L-10336, May 31, 1957) and may duly appeal therefrom. But appellant should await that a judgment on the merits is rendered against him; only then may he appeal from the order of default as well as from the final judgment based upon such default order.

APPEAL from an order of the Court of First Instance of Davao. Fernández, J.

The facts are stated in the opinion of the Court.

Corrales & Ponferrada for plaintiff and appellee.

Habana, Desquitado & Acurantes for defendant and appellant.

Pelayo, Jr. & Fernández for defendant-intervenor and appellee.

REYES, J. B. L., J.:

Appellant Dionisio Leong was sued, in 1955, in the Court of First Instance of Davao by MANDIAN (Manoba), the widow and second consort of his late father Leong Lung (Civ. Case No. 1533 of that Court). She charged him with having usurped a parcel of land and coconut plantation in Trinidad, Davao, registered in her name under Transfer Certificate of Title No. 561 of Davao, and asked for an accounting of fruits, for damages and attorney's fees.

Answering the complaint, Dionisio denied any usurpation, and pleaded that he possessed and administered the disputed property as part of the estate of his late father Leon, by agreement with plaintiff.

Subsequently, defendant's brother Celestino Leong, upon his petition, was permitted by the court to intervene as defendant, and on June 6, 1955, filed an answer in inter-

vention, pleading that the lot in question was acquired during his father's second marriage to plaintiff Mandian, but that the title was placed in her exclusive name because the husband was not a Filipino citizen. The answer also contained a cross-claim against the original defendant Dionisio Leong, averring his exclusive possession of the estate of the father and his failure to give his coheirs any share in its fruits, and prayed for their accounting and distribution and for attorney's fees. Copy of this answer was served on counsel for cross-defendant Dionisio Leong on June 6, 1955. By order of June 27, 1955, the answer in intervention was admitted and plaintiff ordered to answer the cross-complaint.

On July 1, 1955, a motion was filed *ex parte* by counsel for defendant-intervenor, alleging that no answer had been filed by Dionisio Leong to Celestino's cross-claim up to July 1, i.e., notwithstanding the lapse of 26 days; and prayed that Dionisio be declared in default. Conformably to this motion, the court, on July 2, 1955, declared Dionisio in default.

On July 11, Dionisio sought reconsideration of the order of default, on the ground that his period to answer Celestino's cross-claim should be counted not from the time he was served copy of the answer in intervention but from the time the court admitted it, i.e., from June 27. The court below, however, denied reconsideration and Dionisio Leong appealed to this Court.

The appeal must be dismissed.

The order declaring appellant in default is interlocutory and preliminary to the hearing of the case on the merits (*Sitchon vs. Prov. Sheriff of Occidental Negros*, 80 Phil. 397), and remains under the control of the court, and may be modified or rescinded by it on sufficient ground at any time before final judgment (I Francisco, Rules of Court, Part II, p. 642). Besides, the cross-plaintiff may, for aught we know, fail to establish his claims against appellant with requisite evidence, and the trial court may dismiss the cross-claim, notwithstanding the default. In such event, the appellant would have no cause for complaint, and his appeal would be useless. Thus, the appeal at this stage is premature and improper.

This Court has ruled that it is a prerequisite to defendant's right to appeal that he file a motion under Rule 38 asking that the order of default entered against him be set aside (*Lim Toco vs. Go Fay*, 80 Phil. 166; *Rodrigo vs. Cabrera*, L-6074, September 16, 1954; *Son vs. Melendres*, L-3824, May 16, 1951, and others). Once such motion is filed, the defendant, even if his motion is denied, becomes entitled to notice of all further proceedings including final judgment (*Reyes Calingo vs. Tan*, G. R. L-10336, May 31,

1957) and may duly appeal therefrom. Cross-defendant-appellant, Dionisio Leong, has not yet filed any such motion, since his petition for reconsideration of July 11, 1955, did not aver any surprise, fraud, mistake or excusable neglect. But even assuming that his petition to reconsider may be held to be one under Rule 38, still appellant should await the judgment on the merits of the cross-claim, and if any such judgment is rendered against him, only then may he appeal, from the order of default as well as from the final judgment based upon such default order.

This appeal is, therefore, dismissed, and the trial court ordered to proceed with the hearing of the case, including the cross-claim against appellant Dionisio Leong. Costs against appellant.

SO ORDERED.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Endencia, and Félix, JJ., concur.

Appeal dismissed.

DECISIONS OF THE COURT OF APPEALS

[No. 19265-R. March 23, 1959]

ROSARIO COSTES DIMALANTA, assisted by her husband, EUSEBIO CAMPOS, plaintiffs and appellants, *vs.* MARIA G. DIMALANTA, defendant and appellee.

1. CONTRACTS; CONSIDERATION; CONSIDERATION PRESUMED THOUGH NOT EXPRESSED IN THE CONTRACT.—It has been said that in every contract there must be a consideration to substantiate the obligation, so much so that, even though it should not be expressed in the contract, it is presumed that it exists and that it is lawful, unless the debtor proves the contrary (*Standard Oil Co. vs. Codina Arenas*, 19 Phil. 363, citing Article 1277, Old Civil Code). A recital in a public instrument to the effect that a consideration was paid for the acquisition of property is evidence against the parties thereto and a high degree of proof is necessary to overcome the presumption that such recital is true (*Naval vs. Enriquez*, 3 Phil. 669).
2. EVIDENCE; ESTOPPEL IN PAIS.—*Estoppel in pais* applies to a situation where, because of something which a party has done or omitted to do, he is denied the right to plead or prove an otherwise important fact (19 Am. Jur. 634).

APPEAL from a judgment of the Court of First Instance of Pangasinan. Morfe, J.

The facts are stated in the opinion of the Court.

Primicias & Del Castillo, for plaintiffs and appellants.
Antonio Bengson, Jr., for defendant and appellee.

GUTIERREZ DAVID, *Pres. J.*:

The instant case, Civil Case No. 10470, was tried jointly with two other cases, Cadastral Case No. 33, G. L. R. O. Record No. 914 and Civil Case No. 122, in the CFI of Pangasinan.

The following facts are unquestioned:

On January 19, 1924 Pedro Flor Corcuera sold to Eulalia Dimalanta for ₱700.00 a portion of approximately 450 square meters of a residential lot situated in the then municipality of Dagupan, now City of Dagupan, Pangasinan (Exhibits A and 1). On September 18, 1929, after the death of said Pedro Flor Corcuera, his widow, Vicenta V. Flor, sold to the same Eulalia Dimalanta for ₱200.00 another contiguous portion of approximately 150 square meters of the same lot (Exhibits B and 2). At the time of these two transactions, the portions sold had not yet been surveyed or segregated, hence they could not be technically described in the deeds evidencing the sales. However, the parties are agreed that the portions thus sold are integral parts of what are known as Lots 59

and 139 of the Cadastral Survey of Dagupan and are embraced in Original Certificate of Title No. 25515 issued in favor of the spouses Pedro Flor Corcuera and Vicenta V. Flor.

On October 11, 1939, Eulalia Dimalanta died in Dagupan leaving a last will and testament and some unpaid debts. She also left an estate, of which the aforesaid portions of land she acquired from Pedro Flor Corcuera and Vicenta V. Flor formed a part. In her last will and testament, which was probated on January 30, 1940 (Exhibit F), she instituted as sole and universal heir her acknowledged natural daughter, Rosario D. Costes, also known as Maria del Rosario Dimalanta or Rosario Costes Dimalanta, the herein appellant.

The record further discloses that on November 24, 1939, appellant Rosario Costes Dimalanta executed a deed of assignment and quitclaim (Exhibit 4) in favor of her aunt, appellee *Maria G. Dimalanta*, sister of the deceased Eulalia Dimalanta, conveying to the latter an undivided one-half of the portions of land acquired by Eulalia from the spouses Pedro Flor Corcuera and Vicenta V. Flor, and also one-half of the house then constructed thereon. On April 28, 1941, a consolidation and subdivision plan of the land of the spouses Pedro Flor Corcuera and Vicenta V. Flor was prepared (Exhibit 12). The land which Eulalia Dimalanta acquired from said spouses is designated therein as Lots Nos. 1 and 2. It appears in the plan that Lot No. 1 belongs to appellant Rosario Costes Dimalanta while Lot No. 2 pertains to appellee. When Plan PCS-931 was presented for approval of the lower court in Cadastral Case No. 33, appellant Rosario Costes Dimalanta filed her manifestation under oath wherein she impliedly ratifies the deed of assignment and quitclaim of Lot No. 2 in favor of appellee (Exhibit 13). On August 31, 1943, appellee filed Civil Case No. 122 against the spouses Toribio Jovellanos and Barbara Manuel for reinvocation and injunction. During trial of said case and the cadastral proceedings, appellant, assisted by her husband, filed the instant suit (Civil Case No. 10470), assailing the deed of assignment and quitclaim (Exhibit 4) on the grounds of lack of consideration and employment by appellee of fraud, deceit and duress exercised through undue moral influence.

After a joint hearing of said three cases the court below rendered a single judgment, the pertinent portion of which declares the deed of assignment and quitclaim, Annex A to the complaint, executed by plaintiff in favor of defendant to be valid and perfected contract, still executory as to part of the consideration and accordingly requires defendant to pay plaintiff the balance of P720.50

of the agreed consideration for said deed of assignment and quitclaim over Lot No. 2, Plan PCS-931, with costs against defendant.

Plaintiffs now appeal from said decision on the ground that the lower court erred: (1) in finding that the deed of assignment and quitclaim, Exhibit 4, to have been executed with due consideration; (2) in finding that plaintiff Rosario Costes Dimalanta's consent thereto was not vitiated by error, fraud, deceit and duress exercised through undue moral influence; (3) in finding that plaintiff is estopped from assailing Exhibit 4; (4) in finding that defendant paid the sum of P279.50 in behalf of the deceased Eulalia Dimalanta; and (5) in declaring Exhibit 4 to be a valid and perfected contract.

A contract without a cause produces no effect whatsoever (Art. 1275, Old Civil Code). The questioned deed (Exhibit 4) recites that appellant conveyed to appellee the land in issue, or Lot No. 2, for and in consideration of services rendered by appellee to her sister, the deceased Eulalia Dimalanta, during her lifetime, which services benefited her, and in consideration of the fact that appellee had spent her own money for the medical treatment of the said deceased during her illness, and for her funeral and interment upon her death, which expenses aggregate the sum of P1,000.00, and for other valuable considerations (par. 3, Exhibit 4). In view of this recital, there is *prima facie* presumption that the consideration mentioned was valid and effective and the issue lies upon appellant to prove by sufficient and convincing evidence that there was no consideration for the conveyance. It has been said that in every contract there must be a consideration to substantiate the obligation, so much so that, even though it should not be expressed in the contract, it is presumed that it exists and that it is lawful, unless the debtor proves the contrary (Standard Oil Co. *vs.* Codina Arenas, 19 Phil. 363, citing Article 1277, Old Civil Code). A recital in a public instrument to the effect that a consideration was paid for the acquisition of property is evidence against the parties thereto and a high degree of proof is necessary to overcome the presumption that such recital is true (Naval *vs.* Enriquez, 3 Phil. 669).

Appellee claims that there was a valid consideration of P1,000.00, in support of which the presented receipts of doctors and drugstores (Exhibit 3, 3-A, 3-C to 3-G) totalling P259.50, and a receipt (Exhibit 3-H) of the Philippine National Bank for P300.52 paid by her for the account of "Eulalia D. Vda. de Limlingan (Eulalia Dimalanta) and Geronimo Esguerra". The lower court, planting its finding on the receipts of doctors and drugstores (Exhibits 3, 3-A, 3-C to 3-G), concluded that only

P279.50 of the P1,000.00 consideration had been proved as paid and therefore held that the contract was still executory as to the remaining part of the consideration and consequently ordered appellee to pay appellant the sum of P720.50. In its computation it disregarded the receipt of the bank (Exhibit 3-H reasoning that "Exhibit 4 refers only to money paid by Maria G. Dimalanta for medical treatment and for funeral and interment expenses for the deceased, so that under the rule of *expressio unius est exclusio alterius* all other obligations of the deceased, if any, not included in the categories of medical expenses and funeral and interment charges, must be excluded" and that Exhibit 3-H shows that the amount therein mentioned represents a promissory note of Eulalia D. Vda. de Limlingan and Geronimo Esguerra, which might mean that the former signed said note merely as a guarantor of the latter and that the payment made by appellee for said note might have benefited Mr. Esquerra rather than the deceased Eulalia. We believe the lower court was in error in this respect. The deed of assignment and quitclaim (Exhibit 4), among other things, mentions "other valuable considerations", which certainly embraces Eulalia's indebtedness which appellee paid. And while there is a possibility that the payment might not have benefited Eulalia, nevertheless there is an equal possibility that it was Geronimo Esguerra who was merely the guarantor, as his name comes after that of Eulalia in the receipt. Besides, granting that Eulalia was merely a guarantor, nevertheless she was obliged to pay just the same so that any payment made in her behalf, necessarily redounded to her. It was, therefore, perfectly believable that appellant had accepted said payment as part of the consideration.

Appellant failed to overcome the presumption of existence of due consideration, while appellee's claim of valid consideration was ably supported by some receipts. It is unfortunate that some of the receipts—as recounted by appellee—were lost by fire. Yet her claim as to the amount of expenses was to some extent corroborated by appellant who declared that the funeral rites in church cost P50.00 while the funeral parlor bill was P150.00, although she claimed to have paid both items. Appellee further declared that she paid the day and night nurses the sum of P120.00 for ten days and appellant admitted that said nurses issued no receipts therefor. If it was not appellee who had really paid the expenses for the illness and death of her sister, appellant undoubtedly would not have agreed to include said expenses as part of the consideration for the deed (Exhibit 4). In addition to the fact that appellee presented supporting re-

ceipts, it appears that at the time of the execution of the deed she was in a better position than appellant to defray the said expenses, she being then a high school teacher. On the other hand, appellant's claim that it was she who paid said expenses out of money left by her mother and contributions of neighbors and relatives, stands uncorroborated by even a single receipt. It stands to reason, therefore, that appellee has paid besides the sum of ₱259.50 to doctors and drugstores (Exhibit 3, 3-A, 3-C to 3-G); and ₱300.52 to the Philippine National Bank, the amount of ₱120.00 to day and night nurses; of ₱50.00 for funeral rites and of ₱150.00 to the funeral parlor. Considering that appellant expressly admits having received from appellee the sum of ₱50.00 "to complete the consideration" for the cession of Lot No. 2 Exhibit 13) all the amounts paid by appellee in connection therewith aggregate ₱930.02 or almost ₱1,000.00. Obviously appellee has actually spent said amount or even more and the parties agreed to lump all such expenses in the round figure of ₱1,000.00 to preclude making a detailed accounting thereof.

Appellant admitted that it was she who took care of the household expenses while appellee paid some other expenses (pp. 314-315 t. s. n.). If it were true that appellant was the one who paid the expenses for the illness and death of Eulalia Dimalanta, she would have known at once that appellee was lying when the latter claimed having paid said expenses, and appellant certainly would have refused to execute the deed (Exhibit 4). Apparently appellant, who was present during her mother's illness and death well knew that it was appellee who defrayed said expenses, and for this reason she agreed to convey Lot No. 2 to appellee, so there would be no more need for the latter to file a claim in her deceased sister's estate proceedings.

True, consent given through error, duress, intimidation, or deceit shall be void (Art. 1265, Old Civil Code) but in the instant case there is no showing that appellant's consent to the deed (Exhibit 4) had been vitiated by error, fraud, deceit and duress allegedly exercised by appellee through undue moral influence. Appellant could neither have been mistaken with respect to, or have been deceived as regards the nature or purport of the deed. It is plainly and clearly expressed therein that she had voluntarily conveyed to appellee one-half of the land which Eulalia Dimalanta had acquired from the Corcueras for and in consideration of the services rendered to, and amounts spent by appellee for, said Eulalia Dimalanta. Error, to invalidate consent, must refer to the substance of the thing which is the object of the contract, or to the con-

ditions of the same which have been principally the motive of its execution (Art. 1266, Old Civil Code); and deceit exists where through words or insidious machinations on the part of one of the contracting parties the other is induced to execute a contract which, without them he would not have made (Art. 1269, Old Civil Code). As may be gleaned from the record, appellant has failed miserably to specify and prove in what consisted the duress she alleges. There is no showing that in order to exact her consent to the deed, appellee had exerted irresistible force on her. While appellant may have been reluctant to incur her aunt's displeasure, nevertheless such a fear of displeasing appellee, to whom she owed obedience and respect, would not annul the contract (Art. 1267, Old Civil Code). Such respect and obedience do not amount to moral domination of appellant by appellee, considering appellant's age and educational attainment at the time of the execution of the deed. She was then 26 years of age and had reached third year, high school. Furthermore, she was present at her mother's last illness and demise and fully aware of the circumstances surrounding these events. And to cap it all, she was assisted by her lawyer, Atty. Onofre Sison Abalos, who drafted the deed (Exhibit 4) and before whom it was acknowledged by her and appellee.

Appellant's behavior subsequent to the execution of the deed in question is unmistakably indicative of her full awareness of its effect and of her complete, unvitiated consent thereto. First, she instituted the proper probate proceedings to transfer in her name the properties left by her mother. And while this may be interpreted as merely a move she can acquire the properties inherited, still it was a step to make effective paragraph 5 of the deed (Exhibit 4) and then give validity to the cession. Next, she had the land surveyed and caused the preparation of a consolidation and subdivision plan thereof (Exhibit D of appellant, 12 of appellee) wherein the land that Eulalia Dimalanta had secured from the Corcueras was segregated from the rest of the latter's land and where Lot No. 1 is indicated as the property of appellant and Lot No. 2 as unequivocally belonging to appellee. Later, after Eulalia Dimalanta's house on the two lots was burned, appellant fenced the two lots and built a fence on the dividing line between them (p. 45 t.s.n.). Then, when appellee took possession of Lot No. 2, appellant made no protest whatsoever. Neither did she complain when appellee openly built a house and made improvements worth ₱10,000.00 thereon. On March 8, 1941 appellant wrote appellee (Exhibit 7) "concerning our talk of your buying my part" (referring to appellant's share

or Lot No. 1). On August 9, 1940, appellant filed in Cadastral Case No. 33 a manifestation under oath (Exhibit 13), paragraph 5 of which is to the effect that she had received from appellee the sum of ₱50.00 as additional consideration of one-half of Eulalia Dimalanta's properties (Lot No. 2) which she conveyed to appellee. Thus appellant by her conduct had led appellee to believe that Exhibit U was valid and effective, and appellee acted on such conduct, by erecting a building and making improvements on Lot No. 2. There is a clear case of *estoppel in pais* which applies to a situation where, because of something which he has done or omitted to do, a party is denied the right to plead or prove an otherwise important fact (19 Am. Jur. 634). The rule of *estoppel* applies herein with more vigor inasmuch as appellant committed not only one single act but a series of acts whereby she confirmed the due execution and validity of the assailed deed (Exhibit 4).

In the light of the foregoing discussions, we believe and so hold that the court below committed none of the errors assigned by the appellant.

WHEREFORE, the appealed judgment is affirmed in all respects at appellant's costs.

Hernandez and Amparo, JJ., concur.

Judgment affirmed.

[No. 20657-R. March 23, 1959]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. VICENTE MARASIGAN, TIBURCIO ROBLES and RICARDO ABRENCIA *alias* CARDO, defendants and appellants.

CRIMINAL LAW; GRAVE COERCION; ARTICLE 286, REVISED PENAL CODE.—The essential element of the crime of illegal detention is that there be actual confinement or restraint of the person (*U.S. vs. Cabanag*, 8 Phil. 64; *People vs. Suarez*, 82 Phil. 484; *People vs. Chiong Suy Siong, et al.*, G. R. No. L-6174 February 28, 1955). Where the accused, by means of violence merely dragged and carried the complainant to a distance of three meters from the place where she was first grabbed, such acts do not constitute the crime of frustrated illegal detention but rather that of consummated grave coercion defined and punishable under Article 286 of the Revised Penal Code.

APPEAL from a judgment of the Court of First Instance of Batangas. Barcelona, J.

The facts are stated in the opinion of the Court.

Leodegario D. Castillo, for defendants and appellants.

Assistant Solicitor General Jose P. Alejandro and *Solicitor Jorge R. Coquia*, for plaintiff and appellee.

GUTIERREZ DAVID, *Pres. J.*:

The facts that led to the filing of this case for frustrated serious illegal detention before the Court of First Instance of Batangas are as follows:

On the night of August 30, 1956 at about seven o'clock Saturnina Sandoval, at the instance of Vicente Marasigan, went to the house of Sixta Sandoval, her second cousin and "comadre", located at barrio Balayong, municipality of Bauan, Batangas and invited and prevailed upon Sixta to eat at her (Saturnina's) house, barely fifty meters away, telling Sixta that she had "utao" (some kind of bean) for supper. With the permission of her brother Doming, Sixta went along with Saturnina to the latter's house.

Upon arrival at the premises of Saturnina's house, Sixta saw Vicente Marasigan, who had been courting her, standing at the foot of the stairway. Sensing that there was something wrong with his presence, Sixta told Saturnina to take her back home. At the same time she turned in the direction of her house. But Marasigan immediately grabbed her at the nape with his right hand and embraced and kissed her even as she called him shameless and shouted vainly for help to Saturnina who was then already ascending the stairway heedless of Sixta's call. Then with his left arm, Marasigan covered Sixta's mouth and started to drag her to a nearby orchard. Instinctive-

ly Sixta resisted and fought. She tried to cry for help but she could only utter a suppressed scream (irit"). Then she heard Marasigan say, "Cardo, Cardo, buhatin mo ang mga paa," after which she felt that her feet were lifted by Ricardo Abrenica and Tiburcio Robles who tried to carry her away. In a desperate effort to free herself, Sixta kicked and kicked the hands that held her feet until she succeeded in releasing herself but in so doing she fell into a sitting position about three meters away from where she was first lifted and carried, thereby soiling her skirt, blouse and chemise (Exhibits B, C, and D), respectively. When she stood up, Ricardo Abrenica *alias* "Cardo" and Tiburcio Robles were in front of her while Marasigan was on her left side. Continuously she shouted to her Manong Doming and intermittently scolded the three aforementioned persons. Alarmed by her incessant screams, Robles told his companions, "Let us go, as they may overtake us," and so the three malefactors ran away. Thereafter Sixta went up the house of Saturnina and chided the latter for having placed her into such a predicament and shame to which Saturnina made no reply whatsoever.

Shortly people arrived at the scene of the occurrence including Sixta's brother Doming and her aunt Simeona Alvarez. Immediately thereafter, Sixta, accompanied by Simeona Alvarez and other barrio folks, went to the house of barrio lieutenant Alipio Valdez where she complained and related what the three malefactors did to her. As Valdez was then sick, he sent Jose Villanueva to fetch the Chief of Police of Bauan in the poblacion and on the same night Chief of Police Cesar Arada, Sgt. Felix Sistona, now Lt. Felix Sistona, and a policeman investigated Sixta in the house of the barrio lieutenant. Sixta repeated to the police authorities what happened to her after which they proceeded to the place of the incident and there her pair of wooden shoes, Exhibit A, was picked up by the police authorities. The substance of the incident as related by Sixta was noted down that same night on page 58 of the Police Record of Events or blotter (Exhibit 2).

In spite of the search for the appellants in their respective homes, Lt. Sistona and his men were unable to locate them that same evening and it was only until the next morning that Vicente Marasigan appeared in the office of the Chief of Police.

During the investigation the next day in the house of barrio lieutenant Alipio Valdez, Vicente Marasigan executed a written statement before lieutenant Sistona and sworn to before Justice of the Peace Teofilo de Guia wherein he admitted having embraced, kissed, and tried to abduct Sixta for the purpose of marrying her (Exhibits E, E-3, E-4, E-5, E-6, E-7, and E-8, p. 5, rec.).

Subsequent to the incident, Sixta on account of the embarrassment and shame to which she was subjected desisted from attending social functions and gatherings outside her house.

Vicente Marasigan, testifying in his defense, declared that he has been courting Sixta Sandoval previously and that the latter has accepted his love since February 8, 1956 as evidenced by her letters (Exhibits 3 and 3-A) and photograph and shawl she had given him. As to the incident in question, his version is as follows: On August 30, 1956, he went to the house of Saturnina for the purpose of meeting Sixta there according to their previous agreement to meet in that house. Not finding Sixta there, he requested Saturnina to fetch her in her house. Upon arrival of Sixta at the foot of the stairs of Saturnina's house, he asked for some peanuts which she was carrying and as she was handing him some, she held her hand but she stooped down and she fell sitting on the mud so he tried to help her but she started calling for her brother Doming. So he ran away to the fields because she was afraid her parents might come.

Saturnina Sandoval corroborated the testimony of Marasigan.

Ricardo Abrenica declared that at about five o'clock in the afternoon of August 30, 1956 he met Vicente Marasigan in the main street of barrio Balayong where he was waiting for a friend coming from Sambat to make love to a girl. At about seven o'clock he went home to take his supper. While resting after eating, a certain Antonio Adia came to inform him that his name was involved in the incident which at that time was being investigated in the house of barrio lieutenant Valdez and that no police officer came to look for him the next morning and that he never left the barrio after the incident.

Tiburcio Robles, in turn, declared that he was in his house at the time of the incident sleeping and that he never had any occasion to see Vicente Marasigan that same evening.

Upon the foregoing facts, Vicente Marasigan, Tiburcio Robles and Ricardo Abrenica were found guilty of the crime of frustrated serious illegal detention by the Court below, pursuant to Article 267, Case No. 4 in relation to Articles 6 and 50, all of the Revised Penal Code with the aggravating circumstance of nocturnity offset by the mitigating circumstance of lack of intention to commit so grave a wrong as that actually committed; and each one of them was sentenced to suffer an indeterminate penalty ranging from four (4) years, two (2) months and one (1) day of *prisión correccional* as minimum, to twelve (12) years and one (1) day of *reclusión temporal*,

as maximum, to indemnify jointly and severally, the offended party Sixta Sandoval in the amount of ₱150.00 as moral damages, without subsidiary imprisonment in the event of insolvency in view of the nature of the penalty imposed, and to pay the costs pro rata.

All the defendants appealed and claim that the trial court was in error: (1) in giving full weight and credence to the testimonies of the witnesses for the prosecution especially that of Sixta Sandoval; (2) in completely disregarding and not giving any weight and credence to the testimonies of the witnesses for the defense; and (3) in finding them guilty of the crime of frustrated serious illegal detention despite the failure of the prosecution to present sufficient proof to sustain their conviction beyond reasonable doubt.

Upon a close inspection of the record we came to the conclusion that the incident occurred in the manner narrated by the offended party. The version thereof given by appellant Marasigan is not credible and, to our minds, cannot overcome the direct testimony of the complainant who did not have any evil motive to accuse falsely the herein appellants. Moreover, appellant Marasigan, in his verbal statements before Sgt. Sistona and Chief of Police Arada which he later on confirmed by his written statement, Exhibit E, sworn to before Justice of the Peace Teofilo de Guia, admitted, among other things, that he embraced, kissed and tried to carry away the complainant. Such statements were partly affirmed by him in his answers during the cross-examination in open court. His contention that he was the accepted lover of the complainant was disproved by the latter's own testimony who averred that she had rejected Marasigan and had told him to stop going to her house and that she did not give him the shawl in question which belonged to a certain Guadalupe Sandoval.

Considering that it was Saturnina Sandoval who lured complainant and made possible the commission by the appellants of their unlawful act, the testimony of the former (Saturnina) is naturally biased and should not merit credit. Besides, in her own written statement (Exhibit F) before Sgt. Sistona, duly sworn to before the Justice of the Peace, she admitted that appellant Marasigan tried to carry away the complainant and that at the time she noticed the presence of two other persons. Obviously this contravenes her testimony given in open court.

The alibi set forth by appellants Ricardo Abrenica and Tiburcio Robles to the effect that they were in their respective houses at the time of the incident under investigation, is untenable. It cannot prevail over the positive

testimony of the complainant pointing them as actual participants in the commission of the crime. And it appearing that their houses were not very far from the place where the crime was committed—Robles' house was about 500 meters away and Abrenica's was 10 to 15 meters from the latter's house—, it was not impossible for them to have been in the place of the crime and leave after the perpetration thereof.

It remains to be determined whether the acts committed by the appellants constitute frustrated illegal detention, as the court below adjudged, or grave coercion as appellants claim in their memorandum. Pursuant to the Spanish text of Article 267 of the Revised Penal Code in which it was originally enacted, illegal detention is committed as follows:

"ART. 267—Detención ilegal grave.—Será castigado con la pena de reclusión temporal el particular que secuestrare o *encerrare* a otro o en cualquier forma le privare de libertad."

The essential element of the crime of illegal detention is that there be actual confinement or restraint of the person (U. S. *vs.* Cabanag, 8 Phil. 64; *People vs.* Suarez, 82 Phil. 484; *People vs.* Chiong Suy Siong, et al., G. R. No. L-6174, Feb. 28, 1955).

Anent this element, Groizard and Cuello Calón had the following to say:

"Si del estudio de la persona capaz de cometer y de sufrir el delito, cuya indole y límite estamos procurando dar á conocer, pasamos al de *su forma*, ó sea al de los medios de perpetrarlo, lo primero que debemos hacer es fijar el sentido de las palabras *encerrar y detener*, de que el texto se sirve para indicar esos procedimientos de ejecución. *Encerrar*, es meter á una persona ó cosa en parte de donde no pueda salir; *detener*, ó arrestar, poner en prisión, privar de la libertad á alguno. De estas definiciones se despende que encerrar no es otra cosa sino uno de tantos medios como existen de privar de la libertad á una persona, y, por tanto, que no es posible encerrar á un hombre en un sitio de donde no pueda salir, sin que ese hombre resulte detenido. Sobra, pues, en la ley la palabra encerrar. El objeto de la incriminación quedaría llenado, sin peligrosa redundancia, si sólo se hubiese hablado en ella de la *detención*; pero de usar ambas voces, la mayor emplitud del significado de la palabra detener aconsejaba que aquélla hubiese al menos precedido a la de encerrar.

"Por fortuna, tales incorrecciones no son obstáculo que oscurezca el sentido del artículo. El encierro en la cárcel; el encierro en casa propia ó ajena, en sitio habitado, ó inhabitado, bajo techado, en una cueva ó al aire libre en lugar cercado; el encierro en cualquiera parte y en todo sitio, donde la persona contra la cual se obra no pueda salir, tal es, según la ley, lo que entraña en primer término la fuerza física del presente delito; constituyéndola también en segundo lugar, la detención, la prisión, la privación de la libertad de una persona, en cualquier forma y por cualquier medio ó por cualquier tiempo, en virtud de la cual resulte interrumpido el libre ejercicio de su actividad." (Groizard, el Código Penal de 1870, Tomo V, página 639-640).

"El hecho de privar a una persona de su libertad. El texto legal prevé dos modalidades de privación de libertad, el *encierro* y la *detención*. Encerrar significa recluir a una persona en un lugar de donde no puede salir, detener a una persona equivale a impedirle o restringirle la libertad de movimiento. Se encierra al que se recluye en una habitación como al que se deja en un foso de donde no puede salir; sufre encierro el que trasladándose a un punto en automóvil no puede apearse en el de su destino por no parar o atenuar la velocidad, el conductor. Sufre detención quien hallándose aún en sitio no cerrado no puede moverse, v. gr., por estar atado a un árbol, o con los pies ligados, también el privado de movimiento por haber sido narcotizado, embriagado o hipnotizado.

"La privación de libertad se refiere a una persona determinada y concreta, así para que exista semejante privación hasta que la persona en cuestión no pueda librarse del encierro o de la detención, aun cuando otra de diversa edad, o de mayor vigor, pudiera hacerlo.

"Para que exista privación de libertad y, por tanto, delito, es preciso que el sujeto pasivo no quiera permanecer en el sitio donde está recluso, pues no es posible llamar encierro ni detención a la estancia de una persona en lugar del que no quiere salir." (Cálon, Derecho Penal, Novena Edición, Tomo II, página 700-701).

The appellants in this case merely carried the complainant to a distance of three meters from the place where she was first grabbed. Such act does not connote "encerrar" or "detener" as defined by the Spanish commentators above mentioned. As correctly contended by the appellants, the acts committed do not constitute the crime of frustrated illegal detention but rather that of consummated grave coercion defined and punishable under Article 286 of the Revised Penal Code inasmuch as the appellants by means of violence dragged and carried the complainant to a place about three meters away, against her will.

The case of *People vs. Undiana*, 50 Phil. 641, applied by the trial court and *People vs. Crisostomo*, 46 Phil. 775 invoked by the Solicitor General, are not in point. In said cases the victims were rescued by other persons from the accused; while in the instant case the appellants, after having carried the woman to a distance of only three meters and dropped her because of her struggles, did not persist in dragging her away and voluntarily desisted from furthering their purpose and left without anybody pursuing them when during all the time they were in a position to carry out whatever intent they originally entertained for there was no person present that could have stopped them. The present case is similar to that of *People vs. Fernando and Allado*, 43 Off. Gaz. 1717 where the accused were found guilty of grave coercion upon the following facts:

"In the afternoon of April 24, 1945, Eleuterio Allado chanced to meet appellant Vicente Fernando, a Philippine Army private, and his co-accused in the court below, Antonio Ganon and Perfecto Generoso, an army sergeant. The three were resting in a store

in barrio Tularucan, of the municipality of Janiway, Province of Iloilo. Allado asked the others to help him investigate the loss of some of his clothes. Asked whom he suspected of the theft, Allado pointed to Ordoyo, a "tuba" gatherer; whereupon all the accused in a group repaired to Ordoyo's house. Fernando called Ordoyo and the latter was subjected to investigation and maltreatment with a view to making him confess to the abstraction. Ordoyo finally vouch-safed the information that he had seen complainant Aquilina Adelantar pass by the place where the clothes had been. Thereupon, with Fernando guarding Ordoyo, the group left for the house where Aquilina, a 60-year old woman, lived, and despite her resistance and supplications took her to a grove of 'kamatsile' trees. There the accused Allado and Generoso slapped and maltreated her. Generoso and Ganon also took off her drawers, and bound her hand and foot, while Fernando fired a shot at the ground. Despite the urgings of the accused, Aquilina refused to admit having stolen Allado's clothes, and she was finally released." (People vs. Fernando et al., 43 Off. Gaz. No. 5, pp. 1717, 1718-1719).

In view of all the foregoing, we hold that the appellants are guilty beyond reasonable doubt of the crime of grave coercion with the aggravating circumstance of abuse of superior strength.

WHEREFORE, the appealed judgment is modified and the appellants are, hereby, sentence each to suffer six (6) months of *arresto mayor*, to pay One Hundred (P100.00) Pesos fine and to indemnify the offended party jointly and severally in the amount of P150.00, by way of moral damages, with subsidiary imprisonment in both cases in the event of insolvency, and to pay the costs in all courts.

Hernandez and Amparo, JJ., concur.

Judgment modified.

[No. 21859-R. March 31, 1959]

TESTATE ESTATE OF THE DECEASED AMADEO MATUTE OLAVE.
ANTONIO PEREZ and CELESTINO ALONSO, administrators
and appellants, *vs.* ANUNCIACION CANDELARIO, Special
Administratrix and appellee.

EMPLOYER AND EMPLOYEE; BONUS, NOT A DEMANDABLE AND ENFORCE-
ABLE OBLIGATION.—It is a legal truism that a bonus is not a
demandable and enforceable obligation (Philippine Education
vs. CIR, G. R. No. L-5103, December 24, 1952); that bonus-
giving is a voluntary and gratuitous act and that it is given
as a reward for loyalty and industry which contributed to
the success of the employer's business and made possible the
realization of profits.

APPEAL from the orders of the Court of First Instance
of Manila.

The facts are stated in the opinion of the Court.

Ignacio B. Alcuaz and Ramirez & Ortigas, for adminis-
trators and appellants.

Jose Desiderio, Jr., for Special Administratrix and ap-
pellee.

PAREDES, *J.*:

On May 19, 1957, the administrators of the Testate Es-
tate of Amadeo Matute Olave filed a petition in the probate
court for authority to pay the amount of ₱4,080.00 as
bonus to Antonio Perez corresponding to the year 1953.
On June 20, 1957, the probate court issued the following
order:

"The motion filed by the administrators herein thru counsel on
May 17, 1957, praying for authority to pay Antonio Perez the
amount of ₱4,080.00 as bonus, being not well taken, is hereby denied."
A motion for reconsideration was filed by the counsel for
the administrators on June 28, 1957. On July 8, 1957,
the court issued an order, to wit:

"Before acting upon the motion for reconsideration filed by the
administrators herein thru counsel on May 17, 1957, praying for
authority to pay Antonio Perez the amount of ₱4,080.00 as bonus,
is hereby set for hearing on July 18, 1957, at 8:30 a.m. so that
the movants may adduce evidence in connection with said motion."

On July 18, 1957, in compliance with the above order, the
administrators presented evidence before the Clerk of Court
and on July 25, 1957, an order was handed down which is
hereunder reproduced:

"A motion has been filed on July 2, 1957, praying for the re-
consideration of the order of June 20, 1957, wherein authority to
pay Antonio Perez the amount of ₱4,080.00 as bonus was denied.
The incident was set for hearing so that the movants may adduce
evidence in connection therewith. The evidence consisted in the
testimonies of Antonio Perez and Alex F. Magtibay and Exhibits A,
B and C.

The evidence discloses that the department heads under Amadeo Matute received annual bonus upon the previous indication and approval of said Amadeo Matute; that Antonio Perez received the amounts of P10,000.00 and P4,080.00 as annual bonus for the years 1952 and 1954, respectively; that he did not receive any bonus for the year 1953 for the reason that he was then in Spain on leave; that when he returned from Spain in the year 1954, he noticed that his bonus for the year 1953 was not credited in the books of accounts of Amadeo Matute and he did not bother Amadeo Matute regarding said bonus because the former was ill; and that when Amadeo Matute returned to the Philippines in the month of March, 1955 he did not demand the payment of the bonus for the year 1953 because the former was very ill in the hospital and died one month later.

It is evident from the foregoing evidence that the annual bonus of the department heads under Amadeo Matute was granted only upon the instance and approval of Amadeo Matute. In fact, Antonio Perez received his bonus for the years 1952 and 1954 upon the previous approval of Amadeo Matute and he did not receive the bonus for the year 1953 because the approval thereto of Amadeo Matute was not obtained as the latter was very ill and ultimately died. There was no commitment, either verbal or written, on the part of Amadeo Matute to give such bonus.

In the light of the foregoing, this Court finds that the motion for reconsideration should be as it is hereby denied."

The administrators appealed from the above order and assigned the following errors:

1. Al dictaminar que los bonos de los empleados del finado Matute solo se concedian a instancia y aprobacion del mismo Matute.
2. Al dictaminar que como no hubo promesa (commitment) verbal o por escrito de conceder la bonificacion a Antonio Perez correspondiente al año 1953, Perez no tiene derecho a la misma.
3. Al no autorizar a los administradores a pagar a Antonio Perez la cantidad de P4,080.00 en concepto de bonificacion.

It would seem, however, that the only issue which needs determination is whether or not Antonio Perez, is entitled to the bonus claimed by him, under the facts and circumstances, as testified to by him and the accountant of the Casa Matute, Alex Magtibay. There was no opposition to the petition, or evidence presented by the heirs, legatees and devisees.

After a careful perusal of the record, the discussions and authorities submitted by the parties, we do not find our way clear to alter the conclusions reached by the lower court.

The admission of appellant Perez that he received his bonuses for the years of 1952 and 1954, and that upon his arrival from Spain in 1954, he found that his bonus for the year 1953 was not credited in his favor in the books of the Casa Matute, constitute a mute but eloquent proof of the fact that he was not entitled to a bonus for 1953. The reason is simple. Appellant was on vacation in Spain in said year (1953), at the expense of the company. Amadeo Matute, who was the very person who could order the payment of bonuses to the department heads of his company, to which class of employees Perez belonged, did not

see it fit to give Perez the annual bonus and at the same time defray the expenses for his vacation in Spain. The fact that Antonio Perez did not demand from Amadeo Matute for his bonus for the year 1953, in spite of the fact that he was already given the bonus for the year 1954, lends support to the argument of the appellee that he was not entitled to a bonus for that year. The excuse interposed by appellant Perez, to the effect that he could not ask for his bonus for the year 1953, because when he arrived from Spain in 1954, Amadeo Matute was very ill, is flimsy, to say the least. The fact that Amadeo Matute was able to undertake a trip to Europe on May 7, 1954 and return to the Philippines in the middle of March, 1955, reveals that when Antonio Perez arrived from Spain on April 27, 1954, Amadeo Matute was very much alive and a request for his bonus, if he seriously believed he was entitled to it, could have been made, without grave consequences upon Matute's health. It is argued that since bonuses had been paid to the appellant in 1952 and 1954, *ipso facto*, he should be entitled for the year 1953. It is a legal truism, however, that a bonus is not a demandable and enforceable obligation (Philippine Education *vs.* CIR, G. L. No. L-5103, December 24, 1952); that bonus-giving is a voluntary and gratuitous act and that it is given as a reward for loyalty and industry which contributed to the success of the employer's business which made possible the realization of profits. It cannot be stated, with any degree of plausibility, for no proof was adduced to that effect, that appellant Antonio Perez, while vacationing in Spain in the year 1953, had worked or contributed to the success and realization of profits for the Casa Matute for said year, in Manila.

IN VIEW OF THE FOREGOING, we find that the orders appealed from are in conformity with the evidence and the law, and the same should be, as they are hereby affirmed, in all respects, with costs against administrator-appellant Antonio Perez.

IT IS SO ORDERED.

San Jose and Lanting, JJ., concur.

Orders affirmed.

[No. 16843-R. April 1, 1959]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
LILIAN LEE y PEREZ and JOSE RAMOS y CABIGTING,
defendants; JOSE RAMOS y CABIGTING, defendant and
appellant.

CRIMINAL LAW; VIOLATION OF ARTICLE 201, REVISED PENAL CODE;
OBSCENITY.—Briefs and abbreviated bathing suits or, it may
be conceded, panties and brassieres are not immoral or indecent
per se. Simply wearing one or the other in public cannot be
construed as exhibiting an indecent act. The redeeming fea-
tures of aesthetic sense and beauty might even be considered
present such that if the wearer parades before the public in
such apparels morality is not offended. But the moment the
person wearing either dances on a midnight show before a
male audience in an all too-revealing manner, pulchritude is
transformed into obscenity and the actor cannot, under the
guise of art, claim impunity.

APPEAL from a judgment of the Court of First Instance
of Manila. Santiago, J.

The facts are stated in the opinion of the Court.

Ismael T. Portes, for defendant and appellant.

*Assistant Solicitor General Esmeraldo Umali and At-
torney Jaime M. Lantin*, for plaintiff and appellee.

ANGELES, J.:

Lilian Lee and Jose Ramos were charged of a violation
of article 201 of the Revised Penal Code in an informa-
tion reading as follows:

"That on or about the 2nd day of May, 1953, in the City of Manila,
Philippines, the said accused Lilian Lee y Perez did then and there
wilfully, unlawfully and feloniously exhibit an indecent or immoral
plays, scenes, acts or shows by then and there dancing on the
stage inside Pacific Theater located at Trinidad St., in said City,
a place open to public view, with her private parts hardly covered,
offensive to decency or good customs.

"That the said accused Jose Ramos y Cabigting, being then the
stage show manager of said Pacific Theater did then and there
wilfully, unlawfully and feloniously allow or cause the exhibition
of said indecent or immoral plays, scenes, acts or shows by said
Lilian Lee y Perez.

"Contrary to law."

Lilian Lee jumped bail, so the trial proceeded solely against
Jose Ramos. After trial, he was found guilty of the crime
charged and sentenced to pay a fine of ₱200.00 with sub-
sidiary imprisonment in case of insolvency which should
not exceed six months, and to pay one-half of the costs.
From this decision, Jose Ramos appealed to this Court.

The prosecution presented as its sole witness Patrolman
Jose Montano of the Manila Police Department. As docu-
mentary evidence, the picture of the accused Lilian Lee,
Exhibit A, and the written statement of the accused Jose

Ramos, Exhibit B, were presented. The only evidence presented by the defense was the testimony of the accused Jose Ramos.

Pat. Jose Montano declared that on May 2, 1953, at around 11:00 p.m., Pat. Fabie and he entered the Pacific Theater at Trinidad Street, Manila to observe the burlesque show. They took their seats about three meters from the stage. From that vantage point they saw Lilian Lee danced what was known in the Tagalog dialect as "patalbogtalebog". She wore nothing but a black brassiere and a black transparent panty. So scanty was the panty that it hardly covered her private parts. To the tempo of the music she swayed her hips to and fro, and danced in that manner in standing and squatting positions. In the course of her performance and because of her gyrating movements, her panty lowered. As the acts were indecent and immoral, sexually exciting the public, he arrested Lilian Lee at the stage. He asked for the stage manager and the accused Jose Ramos presented himself and admitted that he was the manager of the show. Lilian Lee and Jose Ramos were taken to police precinct No. 2 where the former posed for a picture in her dancing apparel (Exhibit A), and the latter after being investigated gave the statement, Exhibit B. Pat. Montano demonstrated to the court how Lilian Lee danced on the night in question. And he declared that the statement, Exhibit B, was voluntarily given by the accused Jose Ramos.

In the statement given to the police, Jose Ramos admitted that he was the stage manager of the Pacific Theater on the night in question. He declared that Lilian Lee was one of her performers; that before the show started he instructed her dancers not to exhibit immoral acts; that when Lilian Lee danced on the stage he was at the gate of the theater waiting for the other artists to come; that apart from him no other person is responsible for the exhibitions in the theater; that he will sign the statement after he has read it. The statement bears the signature of Jose Ramos and Pats. Montano and Fabie.

Testifying on his behalf, Jose Ramos declared that on the night in question he happened to pass in front of the Pacific Theater, and his friend, Vidal Escobar, stage manager, requested him to take his place, as the latter would take his supper; that while at the gate of the theater waiting for the other performers to come he was approached by Pat. Montano who asked for the manager of the show; that he told the officer that he was not the manager; that in spite of his explanations he was brought to the police precinct along with Lilian Lee where his statement, Exhibit B, was taken, which statement was

signed by him without reading its contents and at a time when he was already very sleepy.

On rebuttal, Pat. Montano declared that Jose Ramos presented himself to him as the manager and admitted that he was the manager of the show; and that the statement, Exhibit B, was voluntarily given and signed by the accused with full knowledge of its contents.

The sufficiency of the evidence of the prosecution showing that the appellant was the manager of the show is being challenged in this instance. Without denying that he affixed his signature to the statement, Exhibit B, appellant insinuates that we must disregard his statement because he signed it when he was already sleepy and without reading its contents.

As between the transparent excuse advanced by the appellant and the straightforward declaration of the peace officer concerning the execution and signing of the statement, Exhibit B, the latter must be given credence. The lower court was correct in not according any weight to the appellant's pretenses. The policeman declared that Exhibit B was given by the appellant voluntarily and with full knowledge of its content, and we have no doubt that that is the truth. No motive or reason is revealed in the record, and the appellant has not pointed any, why the police officer would testify falsely against him.

Apart from the statement of the appellant wherein he affirmed that he is the manager and owned responsibility for the indecent exhibition, there is the declaration of Pat. Jose Montano that the appellant not only presented himself as the manager of the show but also admitted that he was managing the exhibition on the night in question. We believe that the appellant really made such admission to the police, otherwise he would not have been brought to the police precinct along with Lilian Lee for investigation. The claim of the appellant that he merely acted for and in behalf of Vidal Escobar as the manager of the show is incredible. Admitting as he does that he knows nothing about managing burlesque dances, it is difficult to believe that Escobar would entrust to him such delicate a job. Besides, if it were true that he merely substituted for Escobar, the latter and not he would be questioned at the police precinct. The fact that in appellant's statement no mention was made of Escobar confirms the conclusion that either such person is non-existent or he is not the real manager of the show. After considering the evidence carefully, we have become persuaded that the proof of the prosecution is sufficient. It has shown beyond reasonable doubt that the appellant was the manager of the burlesque show on the night in question.

Appellant next contends that even assuming that he was the manager of the show, since Lilian Lee violated his instructions by dancing in an indecent manner he must not be held responsible. The contention is without merit. If the accused Lilian Lee danced the way she did on the night in question, we believe that it was on account of instructions from the appellant. Lilian Lee was admittedly new in the Pacific Theater when the incident in question took place. She had been with the troupe of the appellant barely two weeks. She was earning the measly sum of P35.00 a week. In her situation, it is improbable that she would dare violate the instructions of the appellant. A slight transgression could mean outright dismissal and loss of a means of livelihood. On the other hand, appellant had every reason to instruct Lilian Lee to dance the way she did. His business was to cater to the base appetites of the burlesque audience. It is very likely that an indecent exhibition was included in the program to satisfy the morbid curiosity and taste of the audience and thereby earn more income for the management. For the indecent exhibitions of Lilian Lee, the appellant who was the manager must be held responsible. Indeed, as he admitted in his statement he and no other is responsible for the immoral exhibition.

Lastly, it is argued that the demonstration of Pat. Montano before the court of how Lilian Lee performed her dance number is not sufficient proof that the exhibition was indecent. It is also contended that the attire worn by Lilian Lee on the night in question, consisting of a black transparent panty as described above and a brassiere of the same color is no different from those worn by modern girls of European countries who frequent beach resorts.

We see from the record that the police officer simply demonstrated to the court what he had seen. There is no showing that it was exaggerated or an unfaithful imitation of the indecent acts of Lilian Lee to foist a crime upon the appellant. Be that as it may, the judgment of conviction was premised not on the policeman's demonstration alone but upon the evidence taken as a whole. We have no doubt but that by the entire proof, the testimony of the policeman plus his demonstration and the picture Exhibit A, the violation of article 201, paragraph 3 of the Revised Penal Code has been sufficiently established.

With nothing on except a very abbreviated black transparent panty that hardly covered her private parts and a black brassiere to arrest her stark nakedness, the accused Lilian Lee swayed and gyrated her hips to the tempo of the music. She moved her buttocks to and fro in standing and squatting positions. In one instance her transparent panty lowered to the intense delight of her

audience. So excited was the public that it howled for more. Obliging and acceding to the audience's desires, she performed two encore numbers. In the exhibition of Lilian Lee one can see nothing but clear and unmitigated immorality and indecency. Her acts could not but inspire and cause lust and lewdness and exert a corrupting influence, as in fact the public were sexually excited. That the dance of Lilian Lee was immoral and indecent and comes within the pale of the prohibition, there is hardly any question.

Nor is the reference to the modern girls of Europe of any help to the defense. We see no similarity between those modern beauties and the accused Lilian Lee. Save perhaps that the brief bathing suits worn on beach resorts bear some semblance to the panty and brassiere of Lilian Lee, there is no room for comparison. Briefs and abbreviated bathing suits or, it may be conceded, panties and brassieres are not immoral or indecent per se. Simply wearing one or the other in public cannot be construed as exhibiting an indecent act. The redeeming features of aesthetic sense and beauty might even be considered present such that if the wearer parades before the public in such apparels morality is not offended. But the moment the person wearing either dances on a midnight show before a male audience in an all too-revealing manner like what the accused Lilian Lee did, pulchritude is transformed into abscenity and the actor cannot, under the guise of art, claim impunity.

Upon the evidence, we find that the guilt of the appellant has been proved beyond reasonable doubt. The penalty imposed upon him is within the limits prescribed by law.

WHEREFORE, the judgment appealed from is affirmed with costs against the appellant.

IT IS SO ORDERED.

Nativided and Sanchez, JJ., concur.

Judgment affirmed.

LEGAL AND OFFICIAL NOTICES

Courts of First Instance

[FIRST PUBLICATION]

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF AKLAN
ELEVENTH JUDICIAL DISTRICT
KALIBO, AKLAN

CASE No. K-12—*Petition for naturalization, JOSE YU, petitioner*

NOTICE OF PETITION FOR PHILIPPINE CITIZENSHIP

To the Honorable Solicitor General, Manila, Mr. Jose Yu, of Kalibo, Aklan and to all whom it may concern:

Whereas, a petition for naturalization has been presented to this court by Jose Yu, who alleges that he was born on February 28, 1923, in the municipality of Kalibo, Capiz (now Aklan); that at present he is a citizen or subject of Nationalist China, under whose laws Filipinos may become naturalized citizens or subjects thereof; that his trade or profession is building construction in which he has been engaged since 1954 from which he derives an average annual income of P4,700.00; that he is married to Raymunda To, who was born in the City of Manila, Philippines, and now residing at Kalibo, Aklan, Philippines; that he has children namely, Daniel T. Yu, who was born on January 13, 1957 at Kalibo, Aklan, Philippines, and Enock T. Yu, who was born on October 13, 1958 at Kalibo, Aklan, Philippines and both now reside at Kalibo, Aklan; that he is a Chinese native born in the Philippines, and from the time of his birth up to the present, he has never left the country; that he has resided continuously in the Philippines for a term of thirty-six years at least, immediately preceding the date of this petition, to wit, since his birth in 1923, and in the municipality of Kalibo, Aklan, for a term of thirty-six years at least, immediately preceding the date of this petition, to wit, since the year 1923; that he is able to speak and write English and Visayan dialects, Ilongo and Aklanon; that he owns real estate in the Poblacion of the municipality of Kalibo, Aklan, worth more or less P25,000.00; that he has not enrolled his children in any school because they are not yet of school age, but he intends to enroll them in any Philippine School; that he is entitled to the benefit of section 3 of Commonwealth Act No. 473, which reduces to five years the ten years of continuous residence required by paragraph two of section 2 of said Act because he was born in the Philippines;

that he believes in the principles underlying the Philippine Constitution; that he has conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relations with the constituted Government as well as with the Community in which he is living; that he has mingled socially with the Filipinos and has evinced a sincere desire to learn and embrace the customs, traditions and ideals of the Filipinos; that he has all the qualifications required under section 2, and none of the disqualifications under section 4 of Commonwealth Act No. 473; that he is not opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments; that he is not defending or teaching the necessity or propriety of violence, personal assault or assassination for the success and predominance of men's ideas; that he is not a polygamist nor a believer in the practice of polygamy; that he has not been convicted of any crime involving moral turpitude; that he is not suffering from any incurable contagious diseases; that the nation of which he is a citizen is not at war with the Philippines; that it is his intention in good faith to become a citizen of the Philippines and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty and particularly to Nationalist China, of which at this time he is a citizen or subject; that he will reside continuously in the Philippines from the date of the filing of his petition up to the time of his admission to Philippine citizenship; that he has not made petition for citizenship to any court; that he is exempted to make a declaration of intention to become a citizen of the Philippines because he was born in the Philippines and has received his primary and secondary education in schools recognized by the government and not limited to any race or nationality and that he has resided continuously in the Philippines for thirty-six years prior to the filing of this petition; that he has no certificate of arrival nor any landing certificate issued by the Collector of Customs or Commissioner of Immigration as he has never left the Philippines since his birth; that Dr. Leonardo Tayco and Mr. Florencio F. Gomez, who are all of legal age, residents of Kalibo, Aklan and all Filipino citizens, will testify as his witnesses at the hearing of his herein petition.